

The City of New York

Financial Information Services Agency and  
Office of Payroll Administration

## REQUEST FOR PROPOSALS FOR INFORMATION TECHNOLOGY AND OTHER CONSULTANT SERVICES

PIN # 127FY1700001

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### AUTHORIZED CONTACT PERSON:

The Authorized Contact Person for all matters concerning this Request for Proposals (“RFP”) is:

Name: Rozaliya Gorelik  
Title: Procurement Analyst  
Telephone #: 212-742-5940  
Email Address: [CPRFP2016@FISA.NYC.GOV](mailto:CPRFP2016@FISA.NYC.GOV)

## **SECTION I. TIMETABLE**

**A. Release Date of this RFP:** August 18, 2016; Updated September 9, 2016.

### **B. Questions; Amendments**

Any communications or questions concerning this RFP must be sent by email to the Authorized Contact Person, at [CPRFP2016@FISA.NYC.GOV](mailto:CPRFP2016@FISA.NYC.GOV); no other FISA, OPA, or City of New York employee or contractor is authorized to respond to inquiries or otherwise discuss this RFP.

FISA/OPA will respond to questions by means of written Addenda to this RFP that will be sent to all organizations that are on record with FISA/OPA as having received a copy of this RFP. FISA/OPA may respond to questions received prior to the Pre-Proposal Conference at the Conference; however only written answers contained in an Addendum will be binding on FISA/OPA. FISA/OPA cannot guarantee timely response to questions received after the Pre-Proposal Conference. **All questions must be received no later than August 25, 2016.**

Any amendments to this RFP will be made only by means of written Addenda; no other communication will be binding on FISA/OPA.

### **C. Pre-Proposal Conference:**

- Date: August 31, 2016
- Time: 2:00 P.M. (ET)
- Location: Department of Health and Mental Hygiene (DOHMH)  
125 Worth Street, 2nd floor Auditorium  
New York, NY 10013

Attendance at the Pre-Proposal Conference is strongly recommended but not mandatory. Any vendor planning to attend the Pre-Proposal Conference should pre-register by email with the Authorized Contact Person identified on the cover page by August 29, 2016. Due to space limitations, attendance will be limited to two (2) representatives per firm. Please provide the names and titles of these attendees to the Authorized Contact Person no later than two (2) business days prior to the date of the Pre-Proposal Conference. (Note: Each attendee must present photo ID in order to enter the building.)

### **D. Proposal Due Date, Time, and Location:**

- Date: September 28, 2016
- Time: 1:00 P.M. (ET)

FISA/OPA will only accept proposals in physical form (as detailed in Section IV below) submitted by U.S. Mail, by commercial delivery service, or by hand. FISA/OPA will **not** accept proposals submitted by fax, email, or other form of electronic transmission.

Proposals sent by U.S. Mail must be addressed as follows:

Financial Information Services Agency/Office of Payroll Administration  
Attn: Rozaliya Gorelik  
Re: Information Technology and Other Consultant Services  
PIN No. 127FY1700001  
450 West 33rd Street, 10th Floor  
New York, NY 10001

Proposals delivered through a commercial delivery service or by hand must be addressed as follows:

Financial Information Services Agency/Office of Payroll Administration  
Attn: Rozaliya Gorelik  
Re: Information Technology and Other Consultant Services  
PIN No. 127FY1700001  
459 West 31st Street, Bay #18  
New York, NY 10001

(Firms that have responded to FISA/OPA solicitations in the past should note that these are new delivery addresses.)

Proposals delivered through a commercial delivery service or by hand must be delivered between the hours of 9:00 A.M. and 4:00 P.M. Eastern Time, Monday–Friday except on the Proposal Due Date stated above. On the Proposal Due Date, proposals will not be accepted after 1:00 P.M. Eastern Time unless FISA/OPA notifies all proposers that the Proposal Due Date and/or Time has been extended. Proposals will not be accepted on Saturday, Sunday, or New York City holidays. Proposers are responsible for informing commercial delivery services, if used, of the above delivery requirements, and for allowing sufficient time for building security checks or other potential delays.

It is the responsibility of each proposer to ensure that all of its materials are properly transmitted (including packaging and addressing, as applicable), and otherwise to ensure timely receipt of its response. FISA/OPA will not be responsible for materials that are lost or damaged in transit regardless of the reason.

Proposals received after the Proposal Due Date and Time are late and will not be accepted by FISA/OPA, except as provided under the New York City Procurement Policy Board Rules (“PPB Rules”).

FISA/OPA will consider requests made to the Authorized Contact Person to extend the Proposal Due Date and Time stated above. *However, unless FISA/OPA issues a written Addendum to the RFP that expressly extends the Proposal Due Date and Time for all proposers, the Proposal Due Date and Time prescribed above will remain in effect.*

**E. Anticipated Contract Start Date: June 1, 2017.**

## **SECTION II. SUMMARY OF THE REQUEST FOR PROPOSALS**

### **A. Purpose of RFP**

The City of New York (the “City”), acting by and through its Financial Information Services Agency and its Office of Payroll Administration (“FISA” and “OPA,” respectively, and together, “FISA/OPA”) is seeking to establish a pool of firms that will compete to provide consultant services as described in this RFP.

FISA is a complex, state-of-the-art information technology service center responsible for the data processing functions and operations of critical City enterprise systems that provide financial, budget and procurement functions to City officers, employees, and agencies. Working closely with owner/client agencies, FISA develops, implements, and maintains both custom-developed and packaged applications, and maintains the requisite technical infrastructure, using in-house project resources and external consultants. FISA also provides a training program and facility, and manages and operates a Citywide call center supporting the services it provides.

OPA is responsible for guiding the continued development and enhancement of the City’s Payroll Management System and related sub-systems, distributing employee pay, maintaining payroll bank accounts, coordinating payroll related matters among central and line agencies and between the City and external organizations (such as the Internal Revenue Service), developing and disseminating uniform payroll procedures, and maintaining the integrity and accuracy of the City’s payroll.

FISA and OPA together employ almost 600 people. However, specific projects require specialized expertise that is not available in FISA/OPA’s workforce. In these cases, FISA/OPA engages external consultants to meet these specific needs.

By means of this RFP, FISA/OPA seeks to create a “Consultant Pool” of vendor firms that will compete to supply qualified and experienced information technology consultants on an as-needed basis in one or more of the following areas of expertise to address FISA/OPA’s specialized needs (this RFP refers to these areas as “Classes,” which are detailed in Section III.A):

- Class A: Custom Systems Development; Customization of Off-the-Shelf Systems; Off-the-Shelf-Products (e.g., tools, etc.)
- Class B: Infrastructure
- Class C: Senior Management
- Class D: Miscellaneous
- Class E: IT Security
- Class F: Security Planning and Assessment

Note: For Class F, the Consultant Pool will supply a specialized practice group (typically including a project lead) that can perform limited, short-term technical tasks in that Class, rather than providing individual consultants.

FISA/OPA anticipates that the Consultant Pool will contain up to 15 vendor firms in each Class.

Each vendor firm selected through this RFP (a “Contractor”) will be awarded a multiple award task order contract (a “Contract”) substantially in the form of Attachment A hereto, to provide services in one or more specified Classes. SUBMISSION OF A PROPOSAL IN RESPONSE TO THIS RFP CONSTITUTES AGREEMENT TO INCLUSION OF TERMS AND CONDITIONS SUBSTANTIALLY IN THE FORM OF THOSE CONTAINED IN ATTACHMENT A IN ANY CONTRACT AWARDED UNDER THIS RFP.

**Note: Any firm that wishes to be considered for more than one Class must submit a separate, complete Price Proposal for each Class.** (See Section IV.A.3 for Price Proposal details.) FISA/OPA will have the right to determine how many and for which Class(es) any proposer will be awarded a Contract, based on the criteria described in this RFP and the best interests of the City.

## **B. Work Assignment**

After the initial award of Contracts, when FISA/OPA identifies a need for services that it wishes to fill via the Consultant Pool, FISA/OPA will issue a “Task Order Request,” as described in more detail in Section III.D.2, to all eligible Contractors with Contracts covering the Class(es) encompassing those services. Each Contractor that receives a Task Order Request must respond in one of the ways described in Section III.D.2. If FISA/OPA selects a Contractor to provide the services, the services and rate (and any other relevant considerations) will be documented in a “Task Order” negotiated and signed by FISA/OPA and the Contractor, as described in more detail in Section III.D.3. Each Task Order will be subject to the Contract’s terms and conditions. Hourly rates will be subject to the maximums established in each Contract.

It is anticipated that most Task Order Requests will seek services from Contractors with Contracts in some subset of Classes A-E to supply a skilled individual (a “Consultant”) to provide specific services as directed by FISA/OPA, which will typically be charged at an hourly rate. On occasion, a Task Order Request may instead seek services from those Contractors that have Contracts in Class F, to supply a specialized practice group (which will typically be charged on a fixed-price basis).

## **C. Anticipated Contract Term**

It is anticipated that the initial term of each Contract will be three (3) years and one (1) month (i.e., ending on June 30, 2020), with the City having options to renew for an aggregate of up to six (6) additional years. FISA/OPA reserves the right, prior to Contract award, to determine the length of the initial contract term and each option to renew, if any. FISA/OPA’s decision on whether to renew any Contractor’s Contract will be based in part on FISA/OPA’s determination of the Contractor’s satisfactory performance.

The City may also terminate any Contract prior to expiration at the City’s sole discretion. The City reserves the right to award no contracts at all, if it is deemed to be in the City’s best interest.

In appropriate situations, FISA/OPA and a Contractor may agree to extend a Task Order’s duration beyond the expiration date of the Contractor’s Contract, as described in Section III.D.3.

#### **D. Anticipated Payment Structure; Comptroller’s Directive 31**

It is anticipated that (i) the only payments to be made under any Contract awarded from this RFP will be as specified in the Task Orders (if any) entered into with the corresponding Contractor, and (ii) payments under a Task Order will typically be based on a specified hourly rate for the individual Consultant. (Where a Task Order provides that a Contractor practice group is to provide services in Class F, payment will typically be on a fixed-price basis triggered by the City’s acceptance of identified deliverables.)

Each Contract awarded as a result of this RFP will be subject to the Office of the Comptroller’s Directive 31 (Special Audit Procedures for Information Technology Consulting and other Information Technology Professional Services Payment Requests under Contracts Specifying Payment to a Vendor based on Time) (“Directive 31”). Under the Contract, FISA/OPA will have the right to require Contractors to provide certain information under Directive 31, as detailed in Section 4.8 of Attachment A (Form of Contract).

All amounts payable to a Contractor under a Contract (regardless of the basis for calculating the amount) will be “fully-loaded,” i.e., they will include all fees, costs, and expenses of any kind.

Proposers are encouraged to propose innovative payment structures in their Technical Proposals only, **without** submitting any related pricing information, and FISA/OPA reserves the right to select any payment structure that is in the City’s best interest.

All FISA/OPA payment obligations under any Contract will be subject to all conditions stated in the Contract as well as any specific terms contained in the Task Order. These conditions may include, among other things, FISA/OPA’s approval of timesheets and/or other documentation of work performed, and/or FISA/OPA’s written acceptance of the work performed or deliverables provided.

### **SECTION III. SCOPE OF SERVICES**

#### **A. Goals and Objectives**

1. Individual Consultants. As stated above, this RFP seeks Contractors that can supply skilled Information Technology and other Consultants in one or more of six Classes on an as-needed basis as specified in Task Order Requests. The Classes covering individual Consultants are listed below (services to be provided by a Contractor’s specialized practice group are detailed in Section III.A.2), along with typical areas of work and examples of titles and skills covered by the Class. Additional areas of work and jobs/skills may be added over the term of the Contract.

**CLASS A:** Custom Systems Development; Customization of Off-the-Shelf Systems and Products (e.g., tools, etc.).

**Typical Areas of Work**  
Project Management  
Systems Development  
Systems Architecture  
Systems Training

**Sample Titles**  
Project Manager  
Designer  
Analyst  
Tester

Systems Security  
Data Administration  
Business Continuity  
Systems Training  
Change Management  
Problem Management

Architect  
Developer  
Data Administrator  
Performance Tester  
Business Continuity Recovery Coordinator  
Security Administrator  
Change Management Administrator  
Problem Management Administrator  
Quality Assurance Analyst  
Quality Control Analyst  
Training Administrator  
Technical Writer

**CLASS B:** Infrastructure, encompassing all types of work relevant to FISA/OPA's hardware and software environments.

**Typical Areas of Work**

Operating Systems  
Data Administration  
Network Administration  
Systems Capacity  
Systems Performance  
Disaster Recovery  
Computer Operations  
Database Administration  
Systems Management  
Systems Security  
Network  
Change Management  
Project Management  
Storage Management  
Systems Architecture  
Software Product Administration  
Problem Management

**Sample Titles**

Operating Systems Administrator  
Infrastructure Systems Designer  
Data Administrator  
Network Administrator  
Capacity Planner  
Performance Administrator  
Training Administrator  
Technical Disaster Recovery Coordinator  
Computer Operator  
Batch Scheduler  
Database Administrator  
Security Administrator (physical & logical)  
Project Manager  
LAN Administrator  
Change Management Administrator  
Storage Management Administrator  
Infrastructure Architect Analyst  
COTS/Tools Administrator  
Desktop Administrator  
JCL/Script Specialist  
Engineer

**CLASS C:** Senior Management, encompassing all types of work at a senior management level (other than legal).

**Typical Areas of Work**

Strategic Planning  
Project Management  
Systems Architecture  
Project Office  
Senior Systems Development/IT Professional Managers  
Senior Management for all Class A areas of work  
Senior Management for all Class B areas of work

Senior Management for all Class D areas of work

**CLASS D:** Miscellaneous.

**Typical Areas of Work**

Audit  
 Troubleshooting  
 Call Center  
 Problem Management  
 Business Services  
 Miscellaneous

**Sample Titles**

Auditor  
 Analyst  
 Call Center Agent  
 Facility Engineer

**CLASS E:** IT Security.

**Typical Areas of Work**

Network Vulnerability Scanning Services  
 Identity Management  
 Security Accreditation  
 Penetration Testing  
 Application Security Scanning  
 Infrastructure vulnerability Scanning  
 Threat Detection and Intelligence  
 Risk Management  
 Encryption  
 Incident Response  
 Policies

**Sample Titles**

Security Analyst  
 Security Engineer  
 Security Administrator  
 Security Architect  
 Code Auditor  
 Penetration Tester  
 Network Analyst  
 Forensic Analyst  
 Malware Analyst  
 Vulnerability Assessor  
 Intrusion Detection Specialist  
 Security Assessment Tester

2. Security Planning and Assessment. As stated above, this RFP also seeks vendors that can provide specialized practice groups of individuals (typically including a project lead) that can perform limited, short-term technical tasks. One Class covers these services:

**CLASS F:** Security Planning and Assessment.

<b>Area of Work</b>	<b>Description</b>
Security Audits	Detailed network security audits, penetration testing, compliance reviews and application code reviews
Security Architecture Development	Analyzing business, technology and security needs and defining a security architecture to implement security processes and controls
Security Control Implementation	Selecting, installing, and integrating security products to address security gaps, resulting in new operational security controls

**B. Assumptions Regarding Contractor Approach**

FISA/OPA's assumptions regarding Contractors that will best achieve the goals and objectives of this RFP are:



**1. Experience and Expertise.**

- The Contractor has demonstrable experience conducting all stages of candidate identification, including recruiting and screening qualified candidates.
- The Contractor has demonstrable experience and knowledge in providing the services of qualified individual Consultants and/or specialized practice group services (as applicable) in the Class(es) for which it submits a proposal.
- The Contractor is or will be capable of understanding the principles and needs of FISA/OPA and will provide qualified individual Consultants and/or specialized practice group services (as applicable) that best reflects them.
- The Contractor has demonstrable successful experience providing the services of qualified individual Consultants and/or specialized practice group services (as applicable) to government organizations, and for projects of a wide range of sizes, scopes and budgets within the applicable Class(es).
- The Contractor can demonstrate successful experience completing projects within established time and budgetary constraints.
- Contractor personnel have education, skill, and experience, including supervisory and project management experience where needed, appropriate to the proposed Class(es).

**2. Organizational Capability.**

- The Contractor has adequate administrative and supervisory staff to support all aspects of the services it will provide to the City.
- The Contractor has adequate managerial and administrative capability to perform and complete multiple projects concurrently.
- The Contractor can ensure continuity in the assignment of staff in the course of each project and over the life of the Contract.
- The Contractor can provide Consultants and/or specialized practice group personnel (as applicable) with the appropriate types and levels of expertise to meet FISA/OPA's needs.
- The Contractor will assign an account manager to coordinate any fixed-price project work under the Contract, and to respond to questions and concerns from FISA/OPA.
- The Contractor will ensure effective communication with FISA/OPA, including making principals and managers available to discuss issues that arise throughout the Contract term.
- The Contractor has a quality control system to ensure that all services (including the services of individual Consultants) are performed well.
- The Contractor has the proper controls in place to assure accurate recordkeeping and billing, and proper performance of all other administrative functions.

**3. Approach.**

- The Contractor will work collaboratively with FISA/OPA's staff and programs.
- The Contractor will offer a combination of expertise and cost that meets FISA/OPA's needs.
- The Contractor will take responsibility for delivering all project deliverables in a timely and cost-effective manner.
- The Contractor can provide innovative solutions to proposed work/projects.

- The Contractor will ensure that the staff assigned to each project understands FISA/OPA's requirements and complies with the FISA/OPA's instructions and policies.

### **C. Scope of Services**

Each Contractor will be expected to perform all of the following throughout the duration of its Contract, and subject to its terms and conditions:

- Understand the technical requirements of Task Order Requests.
- Respond to Task Order Requests (even if a "no bid" response as described below) within the stated time frame.
- Identify and recruit qualified personnel.
- Screen and assess candidates, including verifying education, skills and qualifications, employment history, etc.
- Understand the laws and rules governing conflicts of interest for retired or former City employees (e.g., Chapter 68 of the City Charter) when responding to Task Order Requests, to ensure that the Contractor is not participating in the violation of any applicable legal restrictions.
- Make proposed Consultants and/or practice group personnel available to FISA/OPA for interviews.
- Promptly confirm the availability of selected Consultants and/or practice group personnel to begin working.
- Take all necessary steps to confirm that each proposed Consultant and/or practice group personnel has all applicable legal authorizations to provide services, and that such eligibility is maintained at all times during the duration of any applicable Task Order(s).
- Conduct background and past employee reference checks for selected Consultants and/or practice group personnel prior to the start date of the assignment.
- On an as-needed basis, perform additional security clearance or background checks (such as fingerprinting) beyond the standard background check.
- Deliver to FISA/OPA a non-disclosure agreement signed by each Consultant or practice group personnel that it furnishes.
- Make each Consultant and/or practice group personnel available to begin work on the start work date stated in the Task Order, at the location designated by FISA/OPA.
- Perform all necessary human resources and recordkeeping activities with regard to Consultants and other Contractor personnel, including, without limitation:
  - Maintaining all necessary personnel and payroll records for all Consultants and other Contractor personnel;
  - Computing and withholding any federal, state, and local taxes, unemployment insurance, and any other tax or withholding required by law;
  - Remitting withholdings to the proper governmental authorities and making all applicable employer contributions, such as FICA, unemployment insurance, and so on;
  - Paying net wages and any fringe benefits directly to Consultants; and
  - Providing for workers' compensation and other insurance as prescribed by law.

- Submitting timely and accurate invoices to the City with all necessary documentation, and providing any additional supporting information and/or material requested.
- Provide an experienced, authorized account manager or project manager to serve as the primary liaison between FISA/OPA and the Contractor, with direct access to the Contractor's key decision-makers and overall responsibility for the Contractor's proper performance under the Contract. The City may communicate with such individual regarding any matter arising under the Contract, and such individual will be responsible for ensuring that any issues that the City may raise are promptly and satisfactorily resolved.
- Accept full legal responsibility for the actions of and work performed by all Consultants and/or practice group personnel that it furnishes.
- Performing all services on a timely basis, including with regard to FISA/OPA scheduling needs.

#### **D. Work Assignment Protocol**

##### **1. Summary**

For each work assignment, Consultant Pool Contractors will be solicited pursuant to the process described in this Section III.D, which includes (a) a Task Order Request sent to each Contractor in the applicable Class(es), (b) the evaluation of candidates' résumés/qualifications or a Project Proposal (as applicable) based upon evaluation criteria defined in the Task Order Request, and (c) the execution of a written Task Order by FISA/OPA and the selected Contractor (if any). Each Task Order that will describe the scope of services and costs, and will be subject to the terms of the Contract. A Contractor may be required to manage more than one Task Order at any given time. The Contractor will invoice FISA/OPA for work performed under each Task Order in accordance with the terms of its Contract and the respective Task Order.

As stated in Attachment A (Form of Contract), all proposed subcontractors and subcontracts will be subject to the terms of the Contract, and FISA/OPA's advance written approval.

##### **2. Task Order Requests**

Each Contractor's Contract will identify the Class(es) in which that Contractor may compete to provide services. Contractors will compete on an as-needed basis.

When FISA/OPA identifies services that it wishes to obtain through a Contract, FISA/OPA will categorize the services into the applicable Class(es), and will issue a Task Order Request to all Contractors with Contracts covering the applicable Class(es). (A sample Task Order Request is attached as Attachment B.)

When FISA/OPA seeks the services of an individual Consultant in any of Classes A-E, the Task Order Request will address:

- the services that the Consultant is to provide;
- any minimum/maximum levels of skill and/or experience needed, and any corresponding maximum hourly rate that FISA/OPA is willing to pay (which may be lower than the maximum hourly rate specified in a Contractor's Contract);

- any maximum number of résumés to be submitted;
- the format and quality of any other materials to be submitted;
- the due date for responses; and
- any other considerations FISA/OPA considers relevant.

All Contractors receiving a Task Order Request must respond within the time stated in the Task Order Request by either:

- Submitting, as applicable, either (i) one or more résumés of proposed individual Consultant candidates with corresponding proposed hourly rates (which may not exceed the respective maximums stated in the Contract), or (ii) a proposal for fixed-price practice group project work (a “Project Proposal”) as described below; or
- Submitting a “no bid” response referencing the specific Task Order Request and giving the reason(s) why the Contractor declines to take part in the Task Order Request. If a Contractor reasonably believes, after good faith investigation, that it would be a conflict of interest to respond to a particular Task order Request, it must submit a “no bid” response stating such belief.

Contractors that fail to respond, or that submit a “no bid” response without providing explanation, more than three (3) times in any three (3) year period during the term of their Contract may be found in default of the Contract, and FISA/OPA will have the right to take appropriate action, including (without limitation) suspension or termination of the Contract.

Note: Submission of any proposed Consultant’s résumé will be deemed the Contractor’s representation that such individual meets all requirements stated in the Task Order Request including, without limitation, all technical and other qualifications and (to the best of the Contractor’s knowledge) availability for the proposed start date and assignment duration. FISA/OPA will address Consultant start dates on a case-by-case basis. Contractors will be expected to make reasonable efforts to maintain each Consultant’s availability through the start date.

FISA/OPA will evaluate and rank the résumés and proposed hourly rates of all candidates who meet the minimum requirements set forth in the Task Order Request, including conducting interviews and/or obtaining other information as it deems appropriate.

Following the evaluation, FISA/OPA may (but is not required to) select a candidate in accordance with the evaluation criteria defined in the Task Order Request.

Security Planning and Assessment. Where FISA/OPA seeks the services of a specialized Contractor practice group in Class F, the Task Order Request will include a preliminary scope of work, evaluation criteria for responses the relative weights of those criteria, and any other considerations FISA/OPA considers relevant. In these cases, in lieu of résumés, Contractors would submit a Project Proposal for the services, which FISA/OPA anticipates would typically include:

- A description of the Contractor’s experience directly relevant to the work described in the Task Order Request;

- A complete description of the tasks that the Contractor will perform, and the time required for each;
- The name and résumé of the person who will be directing the Contractor's work on the project;
- The name, title or staff level, and résumé of each person to be assigned to perform the work;
- The total cost of the service/project;
- Details of the identity of, and specific task(s) to be performed by, any proposed subcontractor(s) (all subcontractors and subcontracts will be subject to the terms of the Contract and FISA/OPA's advance written approval);
- A project schedule including relevant deadlines for all proposed deliverables; and
- Any other information requested in the Task Order Request.

Contractors will be required to respond by submitting a response or stating in writing that they are not interested in a Task Order Request and why. Contractors who do not provide an adequate explanation of their decision not to submit a response more than three (3) times during the term of their Contract may be found in default of the Contract and FISA/OPA may take appropriate action, including termination.

FISA/OPA will evaluate and rank each Project Proposal based on the evaluation criteria stated in the Task Order Request, which may include (without limitation) proposed approach, expertise, quality of staff, staffing plan, availability, and/or cost. FISA/OPA may also request interviews or presentations from the Contractors. Each project is expected to be assigned to the highest-rated Project Proposal, taking into account reasonableness of price. However, FISA/OPA reserves the right to also take into account the Contractors' capacity to handle multiple projects.

Contractors will not be entitled to any compensation or costs incurred in connection with preparation of responses to Task Order Requests.

While any Task Order Request is outstanding, FISA/OPA will have the right to (a) amend it (including to request additional material and/or information), (b) cancel it (with or without issuing a replacement), or (c) take any other action that FISA/OPA deems appropriate, to the extent permitted by applicable law and the PPB Rules.

If a Task Order Request includes M/WBE participation goals (see Section III.J), Contractors seeking a waiver must request it at least five (5) business days before the due date for responses.

### **3. Task Orders**

FISA/OPA and the selected Contractor will negotiate and enter into a written Task Order setting forth the details of the specific services such as scheduling, payment, and so on. (A Sample Task Order is attached as Attachment C.) Each Task Order will be subject to the terms and conditions of the Contract. The Task Order will be subject to review by any applicable oversight agencies as necessary to ensure that it meets the best interests of the City.

Any proposed subcontractors for all or any part of the work must meet the applicable assumptions regarding the Contractor's approach, and all proposed subcontractors and subcontracts will be subject to the terms of the Contract, and FISA/OPA's written approval in advance of any work.

A Contractor may be required to manage more than one Task Order at any given time.

Continuation of Task Orders: FISA/OPA and the Contractor may agree to extend a Task Order's duration beyond the expiration date of the corresponding Contract, in which case the Contractor will be required to provide the services beyond that date to the completion of the assignment, and the terms and conditions of the Contract will continue in force with regard to that Task Order until the Task Order's termination or expiration.

At any time while a Task Order is in effect, the City will have the right to discontinue the services of any Consultant without compensation to the applicable Contractor other than payment for hours already worked. The City will be the sole judge of whether services provided are satisfactory. If a Consultant is withdrawn or removed, FISA/OPA will evaluate each situation on a case-by-case basis and determine how to proceed in the City's best interests, such as issuing a new Task Order Request or selecting the next-highest-scored candidate from the original Task Order Request.

#### **E. Performance Evaluation**

As City vendors, Contractors will be subject to the City's standard VENDEX vendor performance evaluation process. This process will include consideration of the following Contractor participation factors:

- How often a Contractor has failed to respond to Task Order Requests, or has declined to take part in Task Order Requests without adequate reason.
- The number and quality of résumés that a Contractor has submitted in response to Task Order Requests, including how many candidates FISA/OPA elected to interview, or the quality of Project Proposals submitted, as applicable.
- How often the Contractor was selected to provide the services sought via Task Order Requests.

#### **F. Timekeeping; Invoices**

All Consultants and other Contractor personnel providing services under any Task Order will be required to comply with FISA/OPA timekeeping policies, including entering work times into a City-designated timekeeping application.

Each Contractor will submit monthly invoices directly to FISA/OPA. Billable working hours may not include any time not actually worked, such as lunch or other mealtime, vacations, or sick leaves taken during the engagement. Work performed outside of regular work hours, including over a weekend or holiday, must be pre-approved in writing by the FISA/OPA manager responsible for the applicable Consultant, with a copy of such approval included with the applicable invoice. All services will be billed at the same hourly rate established in the Task Order regardless of whether they are performed during regular work hours.

Since timekeeping will be managed by a City-controlled application, Contractors will not be subject to the Directive 31 requirement of providing separate timesheets with their invoices. However, as stated in Section II.D, Contractors should be prepared to provide documentation for invoices upon request.

All invoices will be subject to independent City review and approval.

#### **G. Right to Hire**

Each Contract will allow FISA/OPA to hire as an employee any Consultant furnished under a Task Order at any time after (a) sixty (60) days have elapsed from the Consultant's commencement date of work under the Task Order (if the Task Order's duration is sixty (60) days or longer), or (b) the completion of the Task Order (if the Task Order's duration is less than sixty (60) days). No fee or other compensation will be payable to Contractors if the City hires a Consultant in this manner. FISA/OPA expects that Task Order Requests for Consultants will state whether FISA/OPA anticipates hiring the Consultant.

#### **H. Background Checks; Confidentiality**

Each Contract will provide that the applicable Contractor must submit a background check for each individual Consultant that will be performing services, and FISA/OPA may at any time reject any proposed individual Consultant, including after services have commenced. (FISA/OPA's current background check form is attached as Attachment D.) FISA/OPA may also require that Consultants be fingerprinted.

Each Contract will contain provisions addressing the confidentiality of FISA/OPA information. A Contractor's breach of these provisions may result in the temporary or permanent disqualification of the Contractor from participating in future Task Order Requests. In addition, each Consultant will be required to execute a FISA/OPA non-disclosure form as a condition of performing services. (FISA/OPA's current non-disclosure form is attached as Attachment E.)

FISA/OPA's background check and non-disclosure forms are subject to change at any time.

#### **I. Work Location.**

All services are to be provided at City facilities specified by FISA/OPA, which in most cases will be FISA/OPA's offices.

#### **J. Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement (Attachment F, Attachment G, and Attachment H); Subcontracting.**

The contract(s) resulting from this RFP will be subject to the Minority and Women-Owned Business Enterprises (M/WBE) participation requirements established under Section 6-129 of the Administrative Code of the City of New York, as indicated in Schedule B – M/WBE Participation Requirements for Master Service Agreements That Will Require Individually Registered Task Orders (Attachment G). Please see the "Notice to All Prospective Contractors" (Attachment F) for additional information.

**NOTE: All proposers must complete Part II of Attachment G (Schedule B – M/WBE Participation Requirements for Master Service Agreements That Will Require**

**Individually Registered Task Orders), which must be submitted as part of their proposals.**

Depending on the particular Class, FISA/OPA may set M/WBE participation goals for individual Task Orders by including the goals in the applicable Task Order Request. FISA/OPA has determined that the overall participation goal of M/WBEs in Task Orders in Class F (Security Planning and Assessment) will be five percent (5%) of the total value of those Task Orders. FISA/OPA does not anticipate setting M/WBE participation goals generally for Task Orders in other Classes, but may set goals for individual Task Orders where it deems appropriate. FISA/OPA may likewise exempt individual Class F Task Orders from the M/WBE participation goal where it deems appropriate.

Even in the absence of M/WBE goal requirements, FISA/OPA encourages Contractors to support the participation of M/WBEs when seeking subcontractors. FISA/OPA also encourages qualified M/WBEs to submit proposals to become part of the Consultant Pool in response to this RFP. (Note that M/WBE Contractors may be able to count their own participation toward fulfillment of relevant participation goals.)

If M/WBE participation goals are established for an individual Task Order, each Contractor responding to the Task Order Request (other than those submitting a “no bid” response) will be required to submit a completed Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That are Issued Pursuant to Master Service Agreements (see sample attached as Attachment H), unless a full waiver is obtained. Those Contractors that submit this Schedule B and have not obtained a full or partial waiver will be required to fulfill the M/WBE participation goals for that Task Order except to the extent FISA/OPA modifies such goals. Contractors must request a waiver at least five (5) business days before the due date for responses to the Task Order Request.

Subcontracting. As detailed in Attachment A (Form of Contract), all subcontractors and subcontracts will be subject to the terms of the Contract and FISA/OPA’s advance written approval. Each Contractor will be responsible for all acts and omissions of its subcontractors.

**K. Compliance with Local Law 34 of 2007 (Attachment I)**

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City established a computerized database containing the names of any “person” that has “business dealings with the city” as such terms are defined in the Local Law. For purposes of the required database, proposers are required to complete the attached Doing Business Data Form (“Data Form,” Attachment I) and return it with their proposal(s) in a separate envelope. If the proposer is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form. If the City determines that a proposer has failed to submit a Data Form or has submitted a Data Form that is not complete, FISA/OPA will notify the proposer, which will have four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to FISA/OPA. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is emailed or faxed (if the vendor has provided an email address or fax number), or no later than five (5) days from the date of mailing, or upon delivery if delivered by hand or commercial delivery service.



**L. Whistleblower Protection Expansion Act Rider (Attachment J)**

Local Law Nos. 30 and 33 of 2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, the Whistleblower Protection Expansion Act, protect employees of certain City contractors from adverse personnel action based on whistleblower activity relating to a City contract and require contractors to post a notice informing employees of their rights. Please read Attachment J, the Whistleblower Protection Expansion Act Rider, carefully. This Rider will also be part of any Contract.

**M. Compliance with the Iran Divestment Act (Attachment K)**

Pursuant to State Finance Law Section 165-a and General Municipal Law Section 103-g, the City is prohibited from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Each proposer is required to complete the attached Bidders Certification of Compliance with the Iran Divestment Act (Attachment K), certifying that it is not on a list of entities engaged in investments activities in Iran created by the Commissioner of the NYS Office of General Services. If a proposer appears on that list, FISA/OPA will be able to award a contract to such proposer only in situations where the proposer is taking steps to cease its investments in Iran or where the proposer is a necessary sole source. Please refer to Attachment K for information on the Iran Divestment Act required for this solicitation and instructions on how to complete the required form and to <http://www.ogs.ny.gov/About/regqs/ida.asp> for additional information concerning the list of entities.

**N. Paid Sick Leave Law**

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time. Contractors of the City of New York may be required to provide sick time pursuant to the PSLL and the rules promulgated pursuant thereto, codified at Title 20, Chapter 8, of the New York City Administrative Code and Chapter 7 of Title 6 of the Rules of the City of New York, respectively. The PSLL will be a material term of any Contract awarded under this RFP, as provided in the Paid Sick Leave Law Contract Rider that is part of Attachment A (Form of Contract) to this RFP.

**O. Subcontractor Compliance Notice (Attachment L)**

The selected vendor will be required to utilize the City’s web based system to identify all subcontractors in order to obtain subcontractor approval pursuant to PPB Rule section 4-13, and will also be required to enter all subcontractor payment information and other related information in such system during the contract term. Please read the subcontractor compliance notice contained in Attachment L as it relates to competitive solicitations. The City’s new web based subcontractor reporting system will be available on line at the Payee Information Portal at: <https://a127-pip.nyc.gov/webapp/PRDPCW/SelfService>.

**P. HireNYC and Reporting Requirements (Attachment M)**

The Hiring and Employment Rider (Attachment M) shall apply to contracts valued at \$1 million or more for all goods, services and construction except human services contracts that are subject to the Public Assistance Hiring Commitment Rider. The Rider describes the HireNYC process and obligations, including reporting requirements throughout the life of the

contract. The HireNYC process requires contractors to enroll with the HireNYC system within thirty days after the registration of the contract subject to this solicitation, to provide information regarding all entry to mid-level job opportunities arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities. The Rider also includes reporting requirements unrelated to HireNYC.

## **SECTION IV. FORMAT AND CONTENT OF THE PROPOSAL.**

**Instructions:** Proposers should provide all information required in the format described below. The proposal should be printed on both sides of 8½" x 11" paper. Pages should be numbered. The proposal will be evaluated on the basis of content, not length. The City requests that all proposals be submitted on paper with no less than 30% post-consumer material content, i.e., the minimum recovered fiber content level for reprographic papers recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: <http://www.epa.gov/cpg/products/printing.htm>). The proposer should state in its Proposal Cover Letter (Attachment N) whether its proposal complies with this request; failure to comply with this request will not cause a proposal to be considered non-responsive.

### **A. Proposal Format**

#### **1. Proposal Cover Letter (Attachment N)**

The Proposal Cover Letter (Attachment N) transmits the proposer's proposal package to FISA/OPA and specifies the Class that is the subject of the proposal. **As stated above, proposers interested in providing services in more than one Class must submit a separate, complete Price Proposal for each Class** (see Section IV.A.3 below for Price Proposal details). The Proposal Cover Letter should be completed, signed and dated by an authorized representative of the proposer.

#### **2. Technical Proposal**

The Technical Proposal is a clear, concise narrative that addresses the following:

##### **a. Experience**

- i. **Narrative:** Describe the successful relevant experience of the proposer, each proposed subcontractor (if any), and the proposed key staff in providing the services described in Section III, Scope of Services, of this RFP, for the proposed Class. Address the following:
  - The proposer's successful relevant experience providing information technology and related consultant services to government or human service organizations. Describe the proposer's specific strengths, experience and expertise in the proposed Class. Indicate the size and scope of projects handled previously, with brief examples of work completed in specific areas.
  - If proposing for Class F, describe in detail one specific work project the proposer completed in the proposed Class that demonstrates: the proposer's approach, the size and scope of the project, the expertise and organization of the team or individual involved in the project, a description of the work, the outcomes

achieved, the project timeline (proposed and actual), and the cost of the project (proposed and actual).

- ii. Client References: Attach a list of at least two (2) relevant client references for the proposer and two (2) relevant client references for each proposed subcontractor, if any. The list should include the name of the reference entity and contact information (name, title, telephone number and email address) of a responsible person at the reference entity.
  - iii. Class F Key Staff: Proposers proposing in Class F should provide a résumé and/or description of qualifications for each key staff member that it proposes to make available to provide services in Class F. Include educational attainment and experience of the key staff and demonstrated experience of lead managerial personnel in managing multiple complex consulting projects.
- b. Organizational Capability
- i. Demonstrate the proposer's organizational, programmatic, technical, managerial and financial capability to provide the work described in Section III, Scope of Services. (The proposer should clearly indicate those portions of its response to this Organizational Capability section where the services of sub-contractors will be utilized, identifying which sub-contractor(s) will provide the services.) Specifically include/address the following:
    - A description of the proposer, including when it was established, number of employees, locations of corporate offices, office nearest New York City, and any other information regarding its experience that proposer believes relevant.
    - A description of how and where the proposed services will fit into the proposer's organization.
    - Attach an organizational chart showing organizational staffing.
    - Describe ability to enhance capacity and access staff other than on the proposer's organizational chart.
    - Describe and demonstrate the proposer's policies and procedures for ensuring continuation and completion of projects in the event of staff turnover. Address the proposer's outreach methods for identifying and recruiting candidates, including interviewing, evaluating and selecting candidates, and the proposer's policy for notifying clients of changes in key personnel.
    - Attach a copy of the proposer's latest audit report or certified financial statement or a statement as to why no report or statement is available.
- c. Proposed Approach
- i. Describe in general how the proposer will provide the work described in Section III, Scope of Services. Describe or demonstrate the following:
    - Proposer's ability to bring together an appropriate type and level of expertise required for the completion of projects within the timeframes set by FISA/OPA.
    - Proposer's capacity to handle multiple projects at any one time.

- Proposer's ability to complete projects on time and within budget
- Proposer's ability to provide innovative solutions to proposed work/projects
- The role and availability of proposer's principals and managers to staff of FISA/OPA.
- How the proposer will ensure that the staff assigned to each project understands FISA/OPA's requirements and will comply with the Requesting Agency's directives.
- How the proposer will communicate with FISA/OPA to discuss issues that arise throughout the contract term and on individual consulting projects.
- Proposer's system of quality control to ensure that consulting projects are performed well.

### 3. **Price Proposal Form (Attachment O)**

Proposers are encouraged to propose innovative payment structures, and FISA/OPA reserves the right to select any payment structure that is in the City's best interest. Proposers must submit a Price Proposal in the form of Attachment O (Price Proposal Form). As detailed in Section V.B, pricing is not part of the evaluation criteria and will not be scored.

**Reminder: Proposers that wish to propose in more than one Class must submit a separate, complete Price Proposal Form for each such Class (see Section IV.A.5.b).**

For Classes A-E, the Price Proposal should include the proposed maximum hourly rate, in the format prescribed in the Price Proposal Form.

For Class F: since pricing for fixed-price projects cannot be determined in the absence of specific projects, for purposes of comparison and evaluation the Price Proposal should include the proposer's standard hourly rate for each of the job titles defined on the Price Proposal Form (or, where applicable, an indication that the Proposer does not provide that job title). Proposers should also provide their equivalent job title(s), if any. (Task Order Requests may or may not use these titles, depending on the specific services needed.)

All hourly rates must be inclusive of all employee benefits, profit, travel, overhead, administrative costs, transportation, and any other fees, costs, or expenses of any kind.

FISA/OPA reserves the right to determine the maximum not-to-exceed hourly rate in any Task Order, and/or to pursue any performance-based pricing structure not included herein that is in the best interest of the City.

### 4. **Acknowledgment of Addenda (Attachment P)**

The Acknowledgment of Addenda serves as the proposer's acknowledgment of the receipt of the Addenda to this RFP which may have been issued by FISA/OPA prior to the Proposal Due Date and Time, as set forth in Section I.D above. The proposer should complete this form as instructed on the form.

## 5. Checklist – Proposal Package Contents

The proposal package should contain the following materials. Proposers should utilize this section as a checklist to assure completeness prior to submitting their proposals to FISA/OPA.

- a. A sealed inner envelope labeled “Technical Proposal,” containing one original set and ten (10) collated duplicate sets containing all of the documents listed below, presented in the following order:
  - Proposal Cover Letter (Attachment N)
  - Technical Proposal
    - Section I – Experience
    - Section II – Organizational Capability
    - Section III – Proposed Approach
  - Acknowledgement of Addenda (Attachment P)
  - Bidder’s Certification of Compliance with Iran Divestment Act
  - Copy of latest audit report or certified financial statement or statement as to why no report or statement is available
- b. A second sealed inner envelope labeled “Price Proposal, Class \_\_\_\_\_” (stating the applicable Class letter and name) containing one (1) original and eight (8) duplicates of the Price Proposal Form (Attachment O). **Proposers that wish to propose in multiple Classes must submit a separate, sealed inner envelope for each such Class containing the Price Proposal Form (original and copies) for that Class.**
- c. A third sealed inner envelope labeled “Section 6-129 Compliance” containing the Subcontractor Utilization Plan (Attachment G, Schedule B, Part II).
- d. A fourth sealed inner envelope labeled “Doing Business Data Form” containing an original, completed Doing Business Data Form (Attachment I).
- e. A fifth sealed inner envelope labeled “Electronic Copy” containing an exact electronic (PDF) copy of all hardcopy documents submitted in response to this RFP, as follows:
  - i. The complete Technical Proposal as one PDF file named “[**Proposer name**] - **Technical Proposal.pdf**”
  - ii. The copy of latest audit report or certified financial statement (or statement as to why no report or statement is available) as a separate PDF file named “[**Proposer name**] - **Financial Statement.pdf.**”
  - iii. The remaining items listed in Section IV.A.5.a as a separate PDF file named “[**Proposer name**] - **Additional Technical Proposal Material.pdf,**”
  - iv. A *separate* PDF file for *each* Price Proposal Form (Attachment O) being submitted, with each file named “[**Proposer name**] - **Price Proposal Form - Class \_\_.pdf**” (stating just the applicable Class letter).

- v. The Subcontractor Utilization Plan (Attachment G, Schedule B, Part II) as a separate PDF file named “[Proposer name] - Section 6-129.pdf”
- vi. The Doing Business Data Form (Attachment I) complete Technical Proposal as a separate PDF file named “[Proposer name] - Doing Business Data Form.pdf”

For all file names, substitute the proposer’s name for “[Proposer name].”

- f. A sealed outer envelope, box, or other container enclosing the five sealed inner envelopes. The sealed outer container should have two (2) labels containing:
  - The proposer’s name and address, the title and PIN # of this RFP, and the name, email address, and telephone number of the proposer’s contact person.
  - The name, title, and address of the FISA/OPA Authorized Contact Person.

## **SECTION V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES**

### **A. Evaluation Procedures.**

All proposals received by FISA/OPA by the Proposal Due Date and Time will be reviewed to determine whether they are responsive or non-responsive to the requisites of this RFP. Proposals that FISA/OPA determines to be non-responsive will be rejected. All remaining proposals will be evaluated and ranked by a committee consisting of at least three City employees based on the Evaluation Criteria described below. FISA/OPA reserves the right to conduct site visits and/or interviews, to request that proposers make presentations and/or demonstrations, to request additional information or clarification, and/or to request Best and Final Offers, as FISA/OPA deems applicable and appropriate. Although discussions may be conducted with proposers that submit acceptable proposals, FISA/OPA reserves the right to award contracts on the basis of the initial proposals received, without discussion; therefore, each proposer’s initial proposal should contain its best technical and price offer.

### **B. Evaluation Criteria**

Proposals will be evaluated according to the following criteria, which will be given the weight indicated:

Demonstrated quantity and quality of successful relevant experience	50%
Demonstrated level of organizational capability	20%
Quality of proposed approach	30%

### **C. Basis for Contract Award**

Contracts will be awarded to the responsible proposers whose proposals FISA/OPA determines to be the most advantageous to the City, taking into consideration the price and other factors or criteria set forth in this RFP. Within each Class, once FISA/OPA’s evaluations of technical proposals are complete, proposals will be ranked based on their technical score. FISA/OPA anticipates awarding Contracts to up to fifteen (15) of the most highly rated proposers within each Class whose rates FISA/OPA determines to be fair and reasonable. (As stated in Section IV.A.3, pricing comparisons for Class F will be made based on the hourly rates submitted for the job classifications described in that section.)

FISA/OPA does not guarantee that any Contracts (whether in a particular Class or overall) will be awarded as a result of this RFP or, for any Contract that is awarded, that any work will be assigned under it. In addition, FISA/OPA reserves the right to award any Contract in all, some, or only one of the Classes for which the applicable Contractor proposed, as FISA/OPA determines to be in the City's best interest.

Notwithstanding the ranking of proposals, FISA/OPA reserves the right to skip proposals to ensure full coverage within each Class. Contract award shall be subject to the timely completion of contract negotiations between FISA/OPA and the selected proposer(s) and a determination of vendor responsibility.

## **SECTION VI. GENERAL INFORMATION FOR PROPOSERS**

### **A. Complaints.**

The New York City Comptroller is charged with the audit of contracts in New York City. Any proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, at 1 Centre Street, Room 1005, New York, NY 10007; [contract@comptroller.nyc.gov](mailto:contract@comptroller.nyc.gov); or (212) 669-2323. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.

### **B. Applicable Laws.**

This Request for Proposals and the resulting Contract award(s), if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York City Administrative Code, the New York City Charter, and the PPB Rules. A copy of the PPB Rules may be obtained by contacting the PPB at 212-788-0010 or at <http://www.nyc.gov/html/mocs/ppb/html/home/home.shtml>.

### **C. Contract Award.**

Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the requisite New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite VENDEX Questionnaires/Affidavits of No Change and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and Section 6-108.1 of the New York City Administrative Code relating to the Local Based Enterprises program and its implementation rules.

### **D. Proposer Appeal Rights.**

Pursuant to the PPB Rules, proposers have the right to appeal Agency non-responsiveness determinations and Agency non-responsibility determinations and to protest an Agency's determination regarding the solicitation or award of a contract.

**E. Multi-Year Contracts.**

Multi-year contracts are subject to modification or cancellation if adequate funds are not appropriated to FISA/OPA to support continuation of performance in any City fiscal year succeeding the first fiscal year and/or if the contractor's performance is not satisfactory. FISA/OPA will notify the Contractor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-year contract for each succeeding City fiscal year. In the event of cancellation, the Contractor will be reimbursed for those costs, if any, which are so provided for in the contract.

**F. Prompt Payment Policy.**

Pursuant to the New York City's Procurement Policy Board Rules, it is the policy of the City to process contract payments efficiently and expeditiously.

**G. Prices Irrevocable.**

Prices proposed by the proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to FISA/OPA prior to contract award but after the expiration of 90 days after the opening of proposals. This shall not limit the discretion of FISA/OPA to request proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.

**H. Confidential, Proprietary Information or Trade Secrets.**

Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal. All information not so identified may be disclosed by the City.

**I. RFP Postponement/Cancellation.**

FISA/OPA reserves the right to postpone or cancel this RFP, in whole or in part, and to reject all proposals.

**J. Proposer Costs.**

Proposers will not be reimbursed for any costs incurred to prepare proposals.

**K. VENDEX Fees.**

Pursuant to PPB Rule 2-08(f)(2), the contractor will be charged a fee for the administration of the VENDEX system, including the Vendor Name Check Process, if a Vendor Name Check review is required to be conducted by the Department of Investigation. The contractor shall also be required to pay the applicable fees for any of its subcontractors for which Vendor Name Check reviews are required. The fee(s) will be deducted from payments made to the contractor under the contract. For contracts with an estimated value of less than or equal to \$1,000,000, the fee will be \$175. For contracts with an estimated value of greater than \$1,000,000, the fee will be \$350. The estimated value for each contract resulting from this RFP is estimated to be (less than or equal to \$1 million) (above \$1 million).



**L. Charter Section 312(a) Certification.**

Each Contract (if any) to be awarded through this RFP will be a task order contract that will not simultaneously result in the award of a first Task Order. A displacement determination will be made in conjunction with the issuance of each Task Order entered into under that Contract.

**[Remainder of this page is intentionally left blank]**

## **LIST OF ATTACHMENTS**

Attachment A: Form of Contract

Attachment B: Sample Task Order Request

Attachment C: Sample Task Order

Attachment D: Current FISA/OPA Consultant Background Check Form

Attachment E: Current FISA/OPA Consultant non-disclosure form

Attachment F: Notice to All Prospective Contractors: Participation by Minority-Owned and  
Women-Owned Business Enterprises in City Procurement

Attachment G: Schedule B – M/WBE Participation Requirements for  
Master Service Agreements That Will Require Individually Registered Task  
Orders

Attachment H: Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders  
That are Issued Pursuant to Master Service Agreements (MSA)

Attachment I: Doing Business Data Form

Attachment J: Whistleblower Protection Expansion Act Rider

Attachment K: Iran Divestment Act Compliance Rider for New York City Contractors

Attachment L: Subcontractor Compliance Notice

Attachment M: Hiring and Employment Rider

Attachment N: Proposal Cover Letter

Attachment O: Price Proposal Form

Attachment P: Acknowledgment of Addenda

**Attachment A: Form of Contract**

[Attachment A begins on the next page]



**Financial Information Services Agency**

**Office of Payroll Administration**

**AGREEMENT**

**with**

**[CONTRACTOR NAME]**

**for**

**INFORMATION TECHNOLOGY and OTHER CONSULTANT SERVICES**

**For the period June 1, 2017–June 30, 2020,  
with City option to renew for up to an additional six years**

**PIN 127FY1700001**

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THIS AGREEMENT (this “**Agreement**”) dated \_\_\_\_\_, 2016 is entered into by the City of New York (the “**City**”), acting by and through its Financial Information Services Agency and its Office of Payroll Administration (“**FISA**” and “**OPA**,” respectively, and collectively “**FISA/OPA**”), and \_\_\_\_\_ (the “**Contractor**”), a corporation incorporated in the State of New York, or authorized to conduct business in the State of New York pursuant to Article 13 of the New York Business Corporation Law and having offices at \_\_\_\_\_.

## RECITALS

- On or about August \_\_, 2016, the **City** issued a Request for Proposals for Information Technology and Other Consultant Services (the “**RFP**”) for the purpose of awarding work and establishing a pool of contracts for the provision to the **City** of consulting and other services in designated classes, as further described in the **RFP**. (A copy of the **RFP** is attached hereto as Attachment B.)
- The **Contractor** submitted a proposal in response to the **RFP**, which included one or more price proposals that each addressed one of the designated classes referred to in the preceding paragraph (the “**Contractor’s Proposal**,” a copy of which is attached hereto as Attachment I).
- The **City** reviewed the **Contractor’s Proposal**, and found the it to be acceptable with regard to the class(es) of services identified in Attachment A to this **Agreement**.
- The **City** has determined that it would be in its interest to award a contract to the **Contractor** for such class(es) of services.

In consideration of the mutual obligations contained herein, the **City** and the **Contractor** hereby agree as follows:

### Section 1. Definitions; Use of Language

- 1.1. **Defined Terms.** In addition to the terms defined in the title and Recitals of this **Agreement**, whenever used in this **Agreement**, the words and phrases listed below have the meanings given below. Certain other terms are also defined within the body of this **Agreement**.
- 1.1.1. “**Acceptance**” means acceptance of **Deliverables** or other work as provided in Section 10.
  - 1.1.2. “**City Confidential Information**” has the meaning stated in Section 12.
  - 1.1.3. “**Consultant**” means an individual selected by the **City** to perform services pursuant to a **Task Order** (as defined below).
  - 1.1.4. “**Contractor Personnel**” means any and all individuals, including **Consultants**, furnished by, through, or on behalf of, the **Contractor** including through its agents, suppliers, and approved subcontractors, to perform the **Contractor’s** obligations under this **Agreement**.
  - 1.1.5. “**Deliverables**” means those materials, products, or services that the **Contractor** is to prepare, perform, provide, or furnish, to or for the **City** on a fixed-price basis.

- 1.1.6. **“PPB Rules”** means the Rules of the Procurement Policy Board of the City of New York, as amended.
  - 1.1.7. **“Project Proposal”** means a response submitted by the **Contractor** to a **Task Order Request** for the provision of **Services** by a **Contractor** practice group, as provided in Section 7.5.3. (**“Project Proposal”** does not refer to the **Contractor’s Proposal** submitted in response to the **RFP**.)
  - 1.1.8. **“Services”** means any and all services to be provided and work to be performed under this **Agreement**, including under **Task Orders**.
  - 1.1.9. **“Services Classes”** means the “Classes” of work identified in the **RFP** in which the **City** may request **Services** by means of a **Task Order Request**. This **Agreement** applies only to the specific **Services Class(es)** listed in Attachment A, as provided in Section 5.2.
  - 1.1.10. **“Task Order”** means a document entered into by the **City** and the **Contractor** describing specific **Services** that the **Contractor** is to provide under this **Agreement**, as provided more fully in 7.13.
  - 1.1.11. **“Task Order Request”** means a solicitation for services that the **City** sends to the **Contractor**, as provided more fully in Section 7.
- 1.2. **Use of Language.** As used in this **Agreement**, unless expressly stated otherwise herein:
- 1.2.1. The singular comprises the plural and vice versa, as the context may require.
  - 1.2.2. The words “including,” “includes,” etc. are without limitation and are equivalent to “including, but not limited to.”
  - 1.2.3. The word “or” is not exclusive and is equivalent to “and/or.”
  - 1.2.4. All times stated are local New York City time.
  - 1.2.5. All references to “days” are to calendar days unless expressly stated as “business days.”

## **Section 2. Statement of Purpose**

- 2.1. This **Agreement** is one of multiple agreements that the **City** has entered into (or may in the future enter into) with different vendors for the purpose of creating the pool of vendors referred to in the Recitals hereof (the **“Consultant Pool,”** with such agreements, including this **Agreement**, being referred to herein as the **“Consultant Pool Contracts”**). While each **Consultant Pool Contract** was (or will be) entered into as a result of the **RFP**, and may contain similar provisions, this **Agreement** is entirely independent of any and all other present or future **Consultant Pool Contracts**, with the sole exception of the aggregate maximum amount payable across all **Consultant Pool Contracts** described in Section 4.1.

## **Section 3. Effective Date and Term; Renewal**

- 3.1. The initial term of this **Agreement** shall be for three (3) years and one (1) month commencing as of June 1, 2017 (i.e., through and including June 30, 2020), provided, that it shall become effective

only upon the later of (a) its having received all required **City** approvals, and (b) its having been registered pursuant to Section 328 of the Charter of the City of New York.

- 3.2. The **City** shall have options to renew this **Agreement** for successive terms of no more than three (3) years each, upon notice to the **Contractor**, up to a total aggregate renewal of six (6) additional years. For the avoidance of doubt, references in this **Agreement** to the “term” of this **Agreement** shall include any such renewal or other extension of the initial term.
- 3.3. Notwithstanding any expiration or termination of this **Agreement**, unless sooner terminated in accordance with this **Agreement** or such **Task Order** expressly provides otherwise, each **Task Order** entered into during the term of this **Agreement** shall continue in force (and be governed by the terms and conditions of this **Agreement**) for the time provided therein even where such time extends beyond the expiration or termination of this **Agreement**. In any such case, the **Contractor** shall continue to provide **Services** under such **Task Order**, and the terms and conditions of this **Agreement** shall survive the expiration or termination of the **Agreement** with regard to such **Task Order**.
- 3.4. The **City** reserves the right to cancel this **Agreement** or any **Task Order**, in whole or in part, at any time based on a determination by the Executive Director of **FISA/OPA** (or his/her successor or designee) that cancellation is in the best interests of the **City**. The **City** will accord notice and opportunity to cure, if applicable, as it determines reasonable under the circumstances. The cancellation of this **Agreement** shall not effect either any payment obligations of the **City** that have accrued as a result of authorized work already satisfactorily performed under an existing **Task Order**, or (ii) the obligation of the **Contractor** to deliver **Services** under an existing **Task Order** that continues after the cancellation.

#### **Section 4. Payment; Contract Maximum**

- 4.1. In exchange for the **Contractor’s** satisfactory performance of its obligations under this **Agreement**, the **City** shall pay to the **Contractor** fees as provided in any **Task Orders** entered into by the **City** and the **Contractor**, subject to all terms and conditions thereof (including under this **Agreement** generally). While there is no fixed maximum amount payable to the **Contractor** under this **Agreement**, *the total amount payable under this Agreement is subject to a maximum aggregate amount payable under all present and future Consultant Pool Contracts of \$\_\_\_\_\_ (\_\_\_\_\_ dollars and \_\_\_\_\_ cents).*
- 4.2. No amount shall be payable to the **Contractor** under this **Agreement** that is not expressly provided for in an applicable **Task Order**, including for any work the **Contractor** performs to remedy deficiencies in work previously performed.
- 4.3. The **City** shall pay to the **Contractor** any amounts due hereunder following the **Contractor’s** submission to the **City** of itemized invoices in form and substance acceptable to the **City**. All invoices shall be subject to independent **City** review and approval.
- 4.4. All payments to the **Contractor** hereunder shall be made only upon invoices, in form acceptable to the **City**, submitted to the **City** on a monthly basis (unless expressly provided otherwise in an applicable **Task Order**), and subject to prior review and approval by the **City**. The **Contractor** may combine amounts due under separate **Task Orders** into a single invoice so long as such invoice



contains (and clearly identifies) all information that would have been provided had they been invoiced separately. All invoices shall be subject to independent **City** review and approval.

- 4.5. Notwithstanding anything contained in any **Contractor** submission to the contrary, all pricing contained in each **Task Order** shall be deemed to be inclusive of any costs, fees, taxes, or expenses of any kind unless (and only to the extent that) the **Task Order** expressly states otherwise. Without limiting any other right of the **City**, in no event will the **City** be obligated to pay any amount not expressly provided for in an applicable **Task Order**, or for any hours not both authorized by the **City** and actually worked. Without limiting the generality of the foregoing, billable working hours shall not include lunch or other mealtimes (unless authorized by the **FISA/OPA** employee responsible for oversight of the **Services** and the time is spent actually providing **Services**), **City** holidays, or time taken for vacation, illness, or personal matters.
- 4.6. All **Consultants** and other **Contractor Personnel** performing **Services** shall use a timekeeping system provided by the **City**.
- 4.7. The **City** shall pay the **Contractor** in accordance with the Prompt Payment provisions of the **PPB Rules**, which shall be the **Contractor's** sole remedy for late payment of any amount due hereunder.
- 4.8. **Comptroller's Directive No. 31**
- 4.8.1. The **Contractor** acknowledges that this **Agreement** is subject to Comptroller's Directive No. 31 (Special Audit Procedures for Information Technology Consulting and other Information Technology Professional Services Payment Requests under Contracts Specifying Payment to a Vendor based on Time) ("**Directive 31**").
- 4.8.2. The **City** may at any time require the **Contractor** to provide either or both of the following in support of any invoice submitted under this **Agreement** that includes any time-based charges, whether or not the **City** has already paid it:
- a. Timesheets for each **Consultant** (or other applicable **Contractor Personnel**) performing **Services** covered by the invoice, documenting that the individual's work was actually performed. Each timesheet must certify that the individual performed the work described during the hours shown, and that the information presented is accurate and complete, and be signed by the individual and, for work performed at a **City** location, by the individual's on-site supervisor. Each timesheet must contain, for each day (or portion thereof) covered by the invoice:
- Clear identification of the individual by name and title;
  - Clear identification of the **Task Order** under which the invoice is submitted;
  - The number of hours worked per day rounded to the nearest quarter hour;
  - The location where the reported hours were worked;
  - A detailed description of the specific work performed, specifying the particular **Task Order** activity/ies, task(s), or **Deliverable(s)** in support of which the work was performed; and
  - Approval of the timesheet by an authorized **FISA/OPA** employee responsible for oversight of the **Services**.

- b. The **Hourly Bill Rate** and **Personnel Markup** (both as defined below) for each individual performing **Services** covered by the invoice.

4.8.3. As used in this Section 4.8, the following terms have the meanings stated:

- a. "**Hourly Bill Rate**" means the price per hour per individual that the **Contractor** receives in payment for **Services** provided under this **Agreement**.
- b. "**Personnel Markup**" means, for **Contractor Personnel**, the price charged to the **City**, to be expressed as a percentage, above the **Total Compensation** (as defined below) actually paid to **Contractor Personnel** for **Services** performed hereunder, and refers to the price difference between the **Hourly Bill Rate** the **City** pays and the **Hourly Wage Rate** that **Contractor Personnel** receive.
- c. "**Hourly Wage Rate**" means the price per hour per individual that **Contractor Personnel** receive for **Services** provided under this **Agreement**.
- d. "**Total Compensation**" means the combined value of salaries and wages and fringe benefits, paid to or on behalf of an individual, excluding the employer's share of payroll taxes and any stock-option or other equity based compensation and also excluding discretionary performance based bonuses or similar payments.

4.9. All payments to the **Contractor** for work performed hereunder on a fixed-price basis shall be made following the **City's Acceptance** (as provided in Section 10) of the corresponding **Deliverables** pursuant to the terms of the applicable **Task Order**. In no event shall the payment by the **City** of any amount hereunder, by itself, constitute such **Acceptance**.

4.10. The **Contractor** acknowledges that the **City** is exempt from New York State sales and use taxes. All **City** payments hereunder are subject to any provisions for offset or other deduction stated in this **Agreement**, or under applicable law or regulation.

4.11. **Non-funding Clause.** All payment obligations of the **City** hereunder are conditioned upon the availability of **City** funds duly appropriated and authorized for the payment of such obligations.

## Section 5. Consultant Pool

5.1. The **Contractor** shall be part of the **Consultant Pool**, which the **City** may solicit as described herein to (a) furnish one or more individual **Consultant(s)** to provide **Services** to the **City**, or (b) provide the **Services** of a **Contractor** specialized practice group, where in either case such **Services** are in one or more **Services Classes**.

5.2. This **Agreement** has been awarded to the **Contractor** only with regard to the specific **Services Class(es)** identified in Attachment A, and the **Contractor** acknowledges that it will not receive **Task Order Requests** for **Services** that **FISA/OPA** determines are not within one or more of those **Services Class(es)**.

5.3. When the **City** identifies services that it wishes performed by means of the **Consultant Pool**, the **City** will solicit for them by means of the process detailed in Section 7. Any **Services** awarded to the **Contractor** will be documented in a **Task Order** as provided in Section 8.

- 5.4. As a general matter, the **City** anticipates that the **Services** of individual **Consultants** will be charged on an hourly rate basis, and the provision of specialized practice group **Services** will be charged on a fixed-price basis, although the **City** may elect to solicit services on other pricing bases. If selected to provide the **Services**, the **Contractor** shall provide (a) the **Services** of any individual **Consultant** at a rate no greater than that stated in the applicable **Task Order** (which in no event shall exceed the applicable maximum hourly rate stated in Attachment A); and (b) any fixed-price **Services** at prices not to exceed the agreed-upon prices stated in the applicable **Task Order**.
- 5.5. The **Contractor** acknowledges that this **Agreement** does not require the **City** to solicit or award any **Services**, and that the **City** may at any time purchase similar services from any other vendors as it sees fit.

## Section 6. Contractor's Obligations

- 6.1. The **Contractor** shall supply **Services** to the **City** in accordance with the terms of this **Agreement**. Without limiting the generality of the foregoing, the **Contractor's** obligations under this **Agreement** shall include the following:
- 6.1.1. Make commercially reasonable efforts to become familiar with the general business, and the general and business and technical needs, of **FISA/OPA** as they relate to the **Services** in the **Services Class(es)** covered by this **Agreement**.
  - 6.1.2. Identify and recruit qualified personnel.
  - 6.1.3. Timely respond to **Task Order Requests** in accordance with Section 7.5.
  - 6.1.4. Screen and assess candidates, including verifying education, skills and qualifications, employment history, etc.
  - 6.1.5. Understand the laws and rules governing conflicts of interest for retired or former **City** employees (e.g., Chapter 68 of the New York City Charter) when responding to **Task Order Requests**, to ensure that the **Contractor** is not participating in the violation of any applicable legal restrictions.
  - 6.1.6. Make proposed **Consultants** or **Contractor Personnel** available to **FISA/OPA** for interviews consistent with **FISA/OPA** scheduling needs.
  - 6.1.7. Promptly confirm the availability of selected **Consultants** or other **Contractor Personnel** to begin working.
  - 6.1.8. Take all necessary steps to confirm that each proposed **Consultant** or other **Contractor Personnel** has all applicable legal authorizations to provide **Services**, and that such eligibility is maintained at all times during the duration of each applicable **Task Order**.
  - 6.1.9. Conduct background and past employee reference checks for selected **Consultants** or other **Contractor Personnel** prior to the start date of the assignment.
  - 6.1.10. On an as-needed basis, perform additional security clearance or background checks (such as fingerprinting) beyond the standard background check.

- 6.1.11. Deliver to **FISA/OPA** a non-disclosure agreement, in a form prescribed by **FISA/OPA**, signed by each **Consultant** or other **Contractor Personnel** furnished.
- 6.1.12. Make each **Consultant** or other **Contractor Personnel** available to begin work on the start work date stated in the **Task Order**, at the location designated by **FISA/OPA**.
- 6.1.13. Perform all necessary human resources and recordkeeping activities with regard to **Consultants** and other **Contractor Personnel**, including, without limitation:
  - Maintaining all necessary personnel, payroll, and other records for all **Consultants** and other **Contractor Personnel**;
  - Computing and withholding any federal, state, and local taxes, unemployment insurance, and any other tax or withholding required by law;
  - Remitting withholdings to the proper governmental authorities and making all applicable employer contributions, such as FICA, unemployment insurance, etc.;
  - Providing and maintaining all Affordable Care Act requirements/benefits.
  - Paying net wages and any fringe benefits directly to **Consultants**; and
  - Providing for workers' compensation and any other insurance as prescribed by law.
- 6.1.14. Provide an experienced, authorized account manager or project manager to serve as the primary liaison between **FISA/OPA** and the **Contractor**, with direct access to the **Contractor's** key decision-makers and overall responsibility for the **Contractor's** proper performance under this **Agreement**. The **City** may communicate with such individual regarding any matter arising under this **Agreement**, and such individual will be responsible for ensuring that any issues that the **City** may raise are promptly and satisfactorily resolved.
- 6.1.15. Perform all services on a timely basis, including with regard to **FISA/OPA** scheduling needs.

## Section 7. Task Order Requests and Award of Services

- 7.1. When the **City** wishes to award **Services**, the **City** will issue a **Task Order Request** to all eligible **Consultant Pool** members with valid, registered **Consultant Pool Contracts** in force covering the applicable **Services Class(es)**. The **City** shall have sole discretion to determine the **Services Class(es)** that apply to any particular **Services**. The **City** anticipates that it will issue **Task Order Requests** via e-mail or other electronic means, but reserves the right to use any means permitted under applicable law and regulations.
- 7.2. The parties acknowledge that most **Task Order Requests** will be for the services of an individual **Consultant**. The **City** will include the following in each such **Task Order Request**:
  - 7.2.1. The **Services** that the **Consultant** is to perform;
  - 7.2.2. Any minimum or maximum levels of skill or experience that the **Consultant** should or must possess, and any corresponding maximum hourly rate that the **City** is willing to pay (which may be lower, but not higher, than the applicable maximum hourly rate provided for in Attachment A);
  - 7.2.3. If applicable, any maximum number of résumés to be submitted;

- 7.2.4. The nature and format of any other information or materials to be submitted;
- 7.2.5. The due date for responses; and
- 7.2.6. Any other requirements or considerations that the **City** considers relevant.
- 7.3. Where the **City** instead seeks the services of a specialized **Contractor** practice group, it will instead include in the **Task Order Request** a preliminary scope of work, evaluation criteria for responses the relative weights of those criteria, and any other requirements or considerations the **City** considers relevant.
- 7.4. In any **Task Order Request** issued to the **Contractor** hereunder, the **City** may include participation goals for Minority and Women-Owned Business Enterprises (“**M/WBE**”) under Section 6-129 of the Administrative Code of the City of New York, which goals will apply to any resulting **Task Order**. Unless the **Contractor** submits a “No Bid” response to the **Task Order Request** as contemplated in Section 7.5.1, the **Contractor** shall submit with its response a completed Part II of “Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That are Issued Pursuant to Master Service Agreements” (or successor form), a sample of which was attached as Attachment H to the **RFP**, and a current version of which it may obtain from **FISA/OPA** upon request. If the **Contractor** is awarded a resulting **Task Order** and **FISA/OPA** has not granted it a waiver of such participation goals under such Section 6-129, the **Contractor** shall use good faith efforts to meet the participation goals established for that **Task Order**.
- 7.5. The **Contractor** shall respond to each **Task Order Request** that it receives no later than the response date stated in the **Task Order Request** (or, if no response date is stated, no later than 5:00 p.m. (Eastern Time) on the third business day following the date of the **Task Order Request**). Except to the extent that a particular **Task Order Request** may expressly provide otherwise, the **Contractor** shall respond by submitting one of the following to the **City** within the timeframe stated in the preceding sentence:
- 7.5.1. A “No Bid” response, substantially in the form of Attachment C, referencing the specific **Task Order Request** and stating the **Contractor’s** reason(s) for declining to take part in the **Task Order Request**; or
- 7.5.2. Where the **Task Order Request** seeks the provision of an individual **Consultant**:
- One or more résumés of individual candidates meeting the requirements of the **Task Order Request** and able to perform the **Services**;
  - A proposed hourly rate for each résumé submitted, which rate may not exceed the corresponding maximum hourly rate contained in Attachment A or any lower maximum stated in the **Task Order Request**;
  - The date each candidate submitted will be available to begin provide services; and
  - Any other information or material specified in the **Task Order Request**; or
- 7.5.3. Where the **Task Order Request** seeks the provision of **Services** by a **Contractor** practice group, a **Project Proposal** containing the following:
- The **Contractor’s** experience directly relevant to the **Task Order Request**;
  - A complete description of the specific tasks to be performed, including proposed **Deliverables**;

- A project schedule including delivery dates for each proposed **Deliverable**;
  - The name and résumé of the person who will be directing the **Contractor's** work;
  - The name, title or staff level, and résumé of each person to be assigned;
  - A fixed price for each **Deliverable**, payable upon the **City's** written acceptance thereof;
  - The total cost of the **Services**; and
  - Any other information or material specified in the **Task Order Request**.
- 7.6. If, more than three (3) times in any three (3) year period during the term of this **Agreement**, the **Contractor** fails to respond to a **Task Order Request** or submits a "No Bid" response without providing adequate (as determined by the **City**) explanation, the **City** shall have the right to find the **Contractor** in default of this **Agreement** and, at any time after such finding and without limiting any other right of the **City**, to take any or all of the following actions:
- 7.6.1. Excluding the **Contractor** from receipt of one or more future **Task Order Request(s)** for a period determined by **FISA/OPA**.
- 7.6.2. Suspension of this **Agreement** for a period determined by **FISA/OPA**.
- 7.6.3. Termination of this **Agreement**.
- 7.7. The **Contractor** warrants and represents that it has not and will not enter into any direct or indirect arrangement with any other **Consultant Pool** member(s) (regardless of **Services Class**) relating in any manner to services to be provided under any **Consultant Pool Contract**, whether such arrangement is in the form of a subcontract or otherwise. (For the avoidance of doubt, references to **Consultant Pool** members in the preceding sentence include the **Contractor**.) The **Contractor** also acknowledges that all other subcontracting arrangements are subject to the **City's** approval as provided in Section 3 of Appendix A hereto, and to the "Notice to Bidders" contained in Attachment L to the **RFP**.
- 7.8. The **Contractor's** submission of any candidate's résumé shall also constitute the **Contractor's** representation that, to the best of its knowledge as of the time of such submission, such individual will be available to perform the **Services** for which the résumé has been submitted within the requested timeframe, and the **Contractor** shall make commercially reasonable efforts to maintain the **Consultant's** availability during such timeframe.
- 7.9. The **City** shall have sole and absolute discretion to determine and resolve any actual or potential conflicts that may arise in connection with any candidate that the **Contractor** submits, including, without limitation, any breach of the representation and warranty contained in Section 7.7. The **City's** options to resolve such conflicts may include, without limitation, excluding the **Contractor's** submission of the candidate from consideration (regardless of whether the candidate is under consideration through another **Consultant Pool** member), and disqualifying the **Contractor** from participating in the **Task Order Request**.
- 7.10. The **City** may at any time adjust or clarify the scope of any **Services Class(es)**, such as by adding new skills or job functions to those covered thereby. Where the **City** determines, in its sole discretion, that the new skill or job function fits within more than one **Services Class**, it may add such new skill or job function to applicable **Services Classes**.

- 7.11. When responding to a **Task Order Request**, the **Contractor** shall comply with any requirements for responses stated in the **Task Order Request**. The **City** may at any time request additional information in connection with any **Task Order Request**, and the **Contractor** shall promptly provide the information requested. The **Contractor** shall make individual **Consultants** or **Contractor** representatives (as applicable to the **Task Order Request**) available for interview by the **City** at a **City**-selected location upon reasonable advance notice.
- 7.12. If the **City** selects the **Contractor** to provide the **Services**, the **City** and the **Contractor** shall execute a mutually-acceptable **Task Order** as detailed in Section 8.
- 7.13. The **Contractor** shall make each **Consultant** or (its **Contractor Personnel** in the case of **Services** to be performed by a **Contractor** specialized practice group) available to commence work no later than the corresponding start date stated in the applicable **Task Order**. Prior to the commencement of any **Services**, the **Contractor** shall: (a) if applicable, complete a background check regarding each individual **Consultant** and certify the results on a document substantially in the form of Attachment D hereto; and (b) require each **Consultant** or each **Consultant Personnel** (as applicable) to sign a confidentiality statement substantially in the form of Attachment E hereto; and deliver such documents to **FISA/OPA**. At the **City's** request, the **Contractor** shall also require any **Consultant** to submit to fingerprinting. The **City** may at any time change such required form of background check document or confidentiality statement.

## Section 8. Task Orders

- 8.1. Each **Task Order** entered into under this **Agreement** shall detail the scope of work to be performed, the anticipated time frames of work, payment terms, and other relevant details, which may include incorporating some or all of the **Task Order Request**. **Task Orders** for fixed-price work shall also describe, as applicable, any **Deliverables**, work schedules delivery dates, prices, and specific individual **Consultants**, as appropriate. Once effective, each **Task Order** shall become part of this **Agreement**, and shall be subject to the terms and conditions hereof. The parties anticipate that **Task Orders** will be substantially in the form of the sample **Task Order** contained in Attachment C to the **RFP**.
- 8.2. Each **Task Order** providing for **Services** that are to be charged on an hourly or other time-based basis will specify the hourly rate for each **Consultant** that is to perform such **Services** thereunder; provided, that in no event shall such hourly rate exceed the corresponding maximum hourly rate stated in Attachment A.
- 8.3. Where a **Task Order** provides for **Services** to be performed by one or more individual **Consultant(s)** (regardless of the payment structure), the **City** shall have the right at any time in its sole discretion, upon notice to the **Contractor** (which notice may be given by email or telephone as well as any other method permitted hereunder), to require the **Contractor** to withdraw any **Consultant(s)** provided by the **Contractor**. Each such **Consultant** shall cease all **Services** (and vacate any **City** premises, if applicable) no later than the close of business the day of the notice, or at any earlier time stated in the notice.
- 8.4. If the **City** wishes to replace any **Consultant** (whether withdrawn as contemplated in Section 8.3, or otherwise), it may take such action as it deems to be in the **City's** best interest, including issuing a new **Task Order Request**, selecting another qualified candidate from the responses to the applicable **Task Order Request**, or engaging an individual other than through the **Consultant Pool**.

- 8.5. Any time frames contained in **Task Orders** for **Services** charged on a time-based basis will be estimates only. All **Deliverable** delivery dates stated in a **Task Order** are firm unless it expressly states otherwise. The **City** reserves the right to terminate any and all **Services** under any **Task Order(s)** prior to any end date stated therein, including before work has been completed in the case of a fixed-price **Task Order**. The **City** and the **Contractor** may mutually agree to extend any end date contained in a **Task Order**.
- 8.6. The **City** may at any time move an individual **Consultant** from one position to another position, and the hourly rate applicable to such **Consultant** shall be adjusted to the appropriate amounts stated in Attachment A.
- 8.7. All **Consultants** and **Contractor** personnel providing **Services** on an hourly or other time-based basis shall utilize an automated time-keeping system provided by the **City**.
- 8.8. Each executed **Task Order** shall be deemed part of this **Agreement**, but shall not be deemed an amendment or modification hereof. The terms and conditions of this **Agreement** take precedence over any **Task Orders**, and any conflict between any **Task Order** and this **Agreement** shall be interpreted in favor of this **Agreement**; *provided, however*, that where this **Agreement** expressly allows for a **Task Order** to contain a differing term, any such differing term shall take precedence only with regard to the **Task Order** in which it appears. This **Agreement** may only be modified by the parties by means of an express amendment duly executed by the parties.

## **Section 9. Contractor Personnel**

- 9.1. No **Consultant** or other **Contractor Personnel** shall at any time or for any purpose be deemed an employee of **FISA/OPA** or the **City**. The **Contractor** warrants and represents that it maintains, and shall maintain for the term of this **Agreement**, all required Workers' Compensation insurance on behalf its employees.
- 9.2. As between the **City** and the **Contractor**, the **Contractor** shall remain fully liable, and the **City** shall at all times be entitled to look solely to the **Contractor**, for all actions or inactions of all **Consultants** or other **Contractor Personnel** (including any subcontractors), and the performance or non-performance of all obligations hereunder (including those of confidentiality) by all **Consultants** or other **Contractor Personnel**. Without limiting the generality of the foregoing, the **Contractor** shall be responsible to the **City** for the compliance of all **Consultants** or other **Contractor Personnel** with all **FISA/OPA** security requirements.
- 9.3. The **Contractor** shall be responsible for validating that each proposed **Consultant** and other **Consultant Personnel** is eligible to work in the United States and the State of New York, and for ensuring that they retain such eligibility throughout the term of the engagement. The **Contractor** shall retain documentation of such eligibility at least throughout the length of the applicable **Task Order** or any longer period required by law.
- 9.4. In no event shall any termination or suspension of any **Consultant** or other **Contractor Personnel** reduce or limit the **Contractor's** obligations hereunder in any way.
- 9.5. **FISA/OPA** shall have the right at any time during the **Term** to require the **Contractor** to cause any **Consultant** or other **Contractor Personnel** to cease performing **Services** under this **Agreement**. Where those **Services** were being provided under a **Task Order** for the **Services** of a **Contractor**



specialized practice group, the **Contractor** shall promptly replace such **Contractor Personnel** with a qualified replacement acceptable to **FISA/OPA**.

#### 9.6. **Right to Hire**

9.6.1. The **Contractor** acknowledges that it is in the public interest for the **City** to hire qualified individuals as employees, and that the **City** may from time to time identify a **Consultant** furnished by the **Contractor** under a **Task Order** that the **City** in good faith wishes to hire as an employee. In any such case, the **City** shall have the right to (i) solicit such **Consultant** for employment at any time, and (ii) to extend an offer of employment and (if such offer is accepted) hire such individual on such terms as the **City** deems appropriate in its sole discretion, at any time after:

- a. sixty (60) days have elapsed from the commencement date of work under the **Task Order**, if the **Task Order's** stated duration is sixty (60) days or longer; or
- b. the completion of the **Task Order**, if the **Task Order's** stated duration is less than sixty (60) days.

9.6.2. If the **City** hires a **Consultant** as contemplated in Section 9.6.1, the **Contractor** acknowledges and agrees that the income that will have accrued to the **Contractor** as a result of such individual's **Services** hereunder shall constitute full and adequate consideration for the **City's** hiring of such **Consultant** in lieu of any "finder's fee," commission, or other form of compensation.

9.6.3. The **Contractor** shall make commercially reasonable efforts to provide each **Consultant** free of any limitation on the **City's** ability to hire such **Consultant**, and shall not take any action, or enter into any obligation with any entity, preventing or limiting the **City** from hiring any **Consultant**.

9.7. The **Contractor** acknowledges, and shall inform each **Consultant**, that becoming a **Consultant** does not constitute or guarantee any offer of employment by the **City** employee. The **Contractor** shall not make any direct or implied representation to any **Consultant** that is inconsistent with the foregoing.

#### **Section 10. Review and Acceptance of Deliverables**

10.1. A **Deliverable** may be composed of multiple "**Subdeliverables**," each of which may in turn be composed of multiple "**Work Products**." **Subdeliverables** and **Work Products** may or may not be individually subject to **Acceptance**, as provided in an applicable **Task Order**. Where the context allows, the term "**Deliverable**" in this **Agreement** shall be deemed also to refer to **Subdeliverables** and **Work Products**. (The terms "**Subdeliverable**" and "**Work Product**" are not used elsewhere in this **Agreement**, but are defined here for convenience for future use in **Task Orders** or as the parties otherwise deem appropriate.)

10.2. Following receipt of the final version of each **Deliverable**, the **City** shall have a minimum of ten (10) business days (or such longer period provided for in an applicable **Task Order**) (the "**Acceptance Period**") to review such **Deliverable**. The **Contractor** shall not cease or delay

performance of any **Services** that is dependent on any **Deliverable** for which a determination regarding **Acceptance** is pending.

- 10.3. Following the end of the **Acceptance Period**, the **City** will give **Contractor** notice that (i) the **Deliverable** is **Accepted** in the form delivered by **Contractor** (such notice being a “**Notice of Acceptance**”), or (ii) the **Deliverable** is not **Accepted**, in which case the **City** will describe in reasonable detail the deficiencies that must be remedied prior to its **Acceptance** (such notice being a “**Notice of Rejection**”), or (iii) the **City** needs additional time to complete its review thereof. **Contractor** shall notify the **City** if the **City** fails to timely provide such notice.
- 10.4. The **City’s Acceptance** of any **Deliverable** shall only constitute the **City’s** consent (a) to the continuation of work to the extent such continuation is conditioned upon such **Acceptance**, and (b) to pay any amount expressly conditioned upon such **Acceptance** (subject to all other rights of the **City** relating to such payment). In no event shall the **City’s Acceptance** of a **Deliverable** be deemed the **City’s** waiver, release, or limitation of any right of the **City**.
- 10.5. In no event shall the **City** be deemed to have **Accepted** a **Deliverable** in the absence of an effective **Notice of Acceptance** thereof. A **Notice of Acceptance** for a **Deliverable** shall only be effective if (a) it clearly identifies the **Deliverable** and the effective date of such **Acceptance**, (b) it expressly states that the **City Accepts** such **Deliverable** under this **Agreement**, and (c) it is signed by a duly authorized **City** representative. **Acceptance** of any **Deliverable** under this **Agreement** shall be specific to that **Deliverable**, and shall not constitute or imply **Acceptance** of any other **Deliverable**.
- 10.6. Following receipt of a **Notice of Rejection**, the **Contractor** shall remedy the described deficiencies (together with any other deficiencies that come to **Contractor’s** attention) within the time stated in the **Notice of Rejection** (or, if no such time is stated, within a reasonable time) at no additional charge to the **City**, including repeating all applicable testing or other review processes and fully resolving any issues revealed thereby, and provide the corrected **Deliverable** to the **City**. Following the **City’s** receipt of the corrected **Deliverable**, a further **Acceptance Period** of the same duration as the original **Acceptance Period** shall commence, during which the **City** will review the corrected **Deliverable**, and the process of correcting deficiencies in a **Deliverable** as described in this Section 10.6 shall continue at no additional charge to the **City** until all deficiencies in such **Deliverable** have been corrected.
- 10.7. Unless expressly stated otherwise in the corresponding **Notice of Rejection**, the **Contractor** shall continue performing any **Services** that depend on or follow from a rejected **Deliverable** during the remediation of deficiencies.

## Section 11. Notices

- 11.1. Supplementing Section 14.04 of Appendix A: The **City** and the **Contractor** shall send any notices and other written communications to the other under this **Agreement** to the respective addresses and personnel specified below:

If to the **City**:

Financial Information Services Agency  
450 West 33rd Street, 4th Floor

New York, NY 10001  
Attention: Contracts Unit

For invoices only:

Financial Information Services Agency  
450 West 33rd Street, 4th Floor  
New York, NY 10001  
Attention: Accounts Payable, Fiscal Unit

If to the **Contractor**:

*[Contractor name]*  
*[Contractor address]*

Attn: \_\_\_\_\_ *[name & title]*

## Section 12. Confidentiality

12.1. **City Confidential Information.** Subject to the exclusions stated in Section 12.2, “**City Confidential Information**” includes all information and materials, whether tangible or intangible, belonging to the **City** or in the **City’s** possession or control, which is of a confidential or proprietary nature (whether or not so designated) including, without limitation:

- 12.1.1. information concerning the **City’s** computer systems and technology (including, but not limited to, information concerning current and future hardware, software, configurations, operations, networks, computing facilities and locations, processes, research, projects, designs, or specifications, as well as any current, future, or potential business recovery or business continuity plans);
- 12.1.2. all computer programs (including, but not limited to, code, software output, screen displays, file hierarchies, algorithms, graphics, and user interfaces), any and all data that may be used with such computer programs (whether or not such data reflects actual information), related designs and documentation, technical data, research, formulas, techniques, processes, and technology;
- 12.1.3. information concerning current or former **City** employees, contractors, or vendors;
- 12.1.4. information that the **City** receives from third parties if the **City** is subject to a duty to keep such information confidential;
- 12.1.5. all original and copied notes, memoranda, and other records and documentation of the **Contractor** and its employees, partners, officers, directors, agents, contractors, and professional advisors, and all **Consultants** and other **Contractor Personnel**, to the extent relating to, derived from, or incorporating any **City Confidential Information**;
- 12.1.6. all reports, information, or data that are subject to Section 5.08 of Appendix A;
- 12.1.7. the terms of this **Agreement** and of any discussions or negotiations between the **City** and the **Contractor** concerning the subject matter stated in the Recitals hereof; and

- 12.1.8. any other confidential or proprietary information or materials relating to the **City's** business or operations (including, but not limited to, trade secrets, processes, or financial information), or that is designated as confidential, proprietary, or the like.

## 12.2. Exclusions

- 12.2.1. **City Confidential Information** does not include information that:

- a. was known to the Contractor prior to its receipt hereunder without any duty of confidentiality to the **City**;
- b. at the time of the Contractor's receipt hereunder was generally available to the public, or which thereafter becomes generally available to the public, through no wrongful act of the Contractor or any entity acting on its behalf;
- c. the Contractor lawfully obtains from any third party who is not under a duty of confidentiality to the **City** with regard to such information; or
- d. is hereafter developed by or on behalf of the **Contractor** without use of, or reference to, any **City Confidential Information**.

- 12.2.2. The **Contractor** shall bear the burden of showing that any of the foregoing exclusions apply. A disclosure of **City Confidential Information** that is specific in nature shall not be subject to any of the foregoing exclusions merely because it is encompassed by more general information that is subject thereto. Nothing in this **Agreement** affects any confidentiality obligation(s) of the **Contractor** to the **City** arising outside this Agreement.

## 12.3. Limitations on Use.

- 12.3.1. The **Contractor** shall handle, use, and treat all **City Confidential Information** in a manner consistent with the following, which obligations shall continue in force unless and until they are expressly superseded or cancelled by a duly executed written agreement between the **Contractor** and the **City**:
  - a. It shall use best efforts to hold all **City Confidential Information** in strict confidence, which efforts in no event shall be less than the same degree of care that it uses to protect its own information of like importance.
  - b. It shall use (or knowingly permit the use of) **City Confidential Information** only for the purpose of furthering the purpose and intent expressly stated in this **Agreement**, subject to the terms hereof.
  - c. It shall restrict disclosure of **City Confidential Information** to:
    - i. those **Consultants** and other **Contractor Personnel** that (A) have a commercially bona fide need to know such **City Confidential Information** in the performance of **Services** under this **Agreement**; and (B) have executed **FISA/OPA's** then-current standard non-disclosure agreement, and delivered it to **FISA/OPA**, pursuant to Section 6.1.11.

- ii. those of its other employees, partners, officers, directors, agents, contractors, and professional advisors that (A) have a commercially bona fide need to know such **City Confidential Information** in furtherance of the limited purposes described in the Recitals of this **Agreement**; (B) are legally bound by non-disclosure obligations with regard to **City Confidential Information** that are at least as stringent as those of the **Contractor** herein (including, without limitation, the obligation to return or destroy **City Confidential Information** upon termination of their applicable relationship with the **Contractor**), which obligations are not subject to termination except as may be provided herein; and (C) have executed an acknowledgement of such obligations in a form acceptable to the **City**, which acknowledgment the **Contractor** has delivered to the **City**; and
- d. It shall not disclose **City Confidential Information** to any third party (other than as permitted in Section 12.3.1.c) without the **City's** express prior written approval in each case.
- e. It shall reproduce (or knowingly permit the reproduction of) **City Confidential Information** only to the extent necessary for furthering the purposes of this **Agreement**, and only in a manner that preserves any and all confidentiality and proprietary notices in full. Any reproduced **City Confidential Information** shall likewise be **City Confidential Information** hereunder.
- f. It shall use best efforts to prevent the integration of **City Confidential Information** with its internal or third-party records (including, without limitation, back-ups) except to extent that such integration is commercially reasonably necessary to further the purposes of this **Agreement**.
- g. It shall not make any attempt (whether itself or through third parties) to reverse engineer, disassemble, decompile, or otherwise analyze the operation of any software, equipment, component, or other item(s) of **City Confidential Information**.
- h. It shall not at any time store, process, transmit, or maintain any **City Confidential Information** in electronic form unless such **City Confidential Information** is securely encrypted using a commercially reasonable encryption standard controlled by the **Contractor**.
- i. It shall not at any time store, process, transmit, or maintain any **City Confidential Information** in electronic form in any portable storage medium, except where use of such a storage medium is part of the **Contractor's** established and secure backup and recovery processes.
- j. It shall not (i) disclose **City Confidential Information** to any entity outside the United States, or (ii) store or transmit any **City Confidential Information** outside the United States; provided, that the momentary transmission or storage of **City Confidential Information** outside the United States shall not be deemed a violation of this provision to the extent merely inherent in electronic transmission between locations within the United States.

#### 12.4. Required Disclosure

- 12.4.1. Notwithstanding Section 12.3 above, the **Contractor** may disclose **City Confidential Information** that it is lawfully required to disclose to a governmental agency, or pursuant to a judicial or governmental order, provided that such disclosure takes place only (i) to the extent required in, and only for the purposes of, such order or requirement as determined by the **Contractor** in good faith, and (ii) after the **Contractor** has made commercially reasonable efforts to withhold disclosure (to the extent permitted under such order or requirement) in order to first promptly notify the **City** in writing of full details of the order, and reasonably cooperates (at the **City's** expense) in any efforts by the **City** to seek a protective order or other protection for such **City Confidential Information**.
- 12.4.2. Any **City Confidential Information** disclosed under this Section 12.4 shall nonetheless remain **City Confidential Information** and subject to this **Agreement** except to the extent that, by operation of the applicable law or order, it becomes part of the public record.
- 12.5. All **City Confidential Information** shall be and remain the property of the **City**. Nothing in this **Agreement** shall be construed as granting the **Contractor** any license or right in or to any **City Confidential Information** or under any **City** intellectual property right.
- 12.6. Promptly following the **City's** written request at any time, the **Contractor** shall make commercially reasonable efforts to (a) return to the **City** all **City Confidential Information** in the **Contractor's** possession or under its control that is capable of being returned; and (b) permanently and irretrievably delete, erase, or otherwise destroy all **City Confidential Information** in the **Contractor's** possession or under its control contained in electronic or other form that, by its nature, is not capable of being returned including, without limitation, **City Confidential Information** contained in computer memory, or in magnetic or optical storage.
- 12.7. The **Contractor** acknowledges that any breach or anticipatory breach of this Section 12 will cause the **City** irreparable harm for which there may be no adequate remedy at law, and that the **City** shall therefore be entitled to injunctive or other equitable relief in addition to any other remedy available to it at law or otherwise. The **City** shall be entitled to recover its attorney's fees and other costs reasonably incurred in any action to enforce its rights under this **Agreement**.
- 12.8. The obligations of this Section 12 shall survive any termination or expiration of this **Agreement**. The **Contractor** shall communicate the obligations of this Section 12 to, and be responsible for the performance of such obligations by, all **Contractor Personnel**. Any conflict between Section 5.08 of Appendix A and this Section 12 shall be resolved in favor of this Section 12.

#### Section 13. Procurement Policy Board

- 13.1. This **Agreement** is subject to the **PPB Rules**, and in the event of a conflict between the **PPB Rules** and a provision of the **Agreement**, the **PPB Rules** shall govern.

#### **Section 14. Conflicts in Terms of Agreement**

14.1. This **Agreement** consists of the documents listed below. During the term of this **Agreement**, any conflict or inconsistency between the various documents shall be resolved in the following descending order of precedence, such documents being hereby incorporated into and constituting the entire agreement between the parties:

- 14.1.1. Each **Task Order** entered into under this **Agreement**; provided, that a **Task Order** may only take precedence over the main body of this **Agreement** with regard to the specific services that are the subject of the **Task Order**.
- 14.1.2. The main body of this **Agreement**
- 14.1.3. Appendix A: General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services
- 14.1.4. Attachment A: Contractor's Services Class(es) and Maximum Hourly Rate(s)
- 14.1.5. Attachment B: The RFP
- 14.1.6. Attachment F: Whistleblower Protection Expansion Act Rider and Notice Required by Local Laws 30 and 33
- 14.1.7. Attachment G: Paid Sick Leave Law Contract Rider
- 14.1.8. Attachment H: Hiring and Employment Rider
- 14.1.9. Attachment E: Sample Confidentiality Statement
- 14.1.10. Attachment C: Sample "No Bid" Response Form
- 14.1.11. Attachment D: Sample Background Check Form
- 14.1.12. Attachment I: Contractor's Proposal

#### **Section 15. Merger and Amendment**

15.1. This **Agreement** (including all attachments and **Task Orders**), as it may be amended from time to time, constitutes the sole and entire agreement between the parties with respect to the matters covered herein, and no other written or oral communication exists which shall bind the parties with respect thereto. This **Agreement** may only be modified by means of a written amendment clearly identified as such and signed by both the **City** and the **Contractor**.

#### **Section 16. Non-Solicitation**

16.1. During the term of this **Agreement**, the **Contractor** shall not, without **FISA/OPA's** prior written consent, directly or indirectly solicit for employment, or respond to any solicitation for employment from, any employee of **FISA/OPA** working on a project involving the **Contractor**. General solicitation activities, such as advertisements in published media, job fairs, college recruitment activities, and the like shall not violate this provision.

**Section 17. Miscellaneous**

17.1. Nothing in this **Agreement** grants the **Contractor** any right or authorization to create any obligation of the **City** in any manner. Nothing in this **Agreement** prohibits the **City** at any time from engaging any other entity to perform services similar or identical to the **Services** contemplated in this **Agreement** or from performing such similar or identical services itself.

17.2. In the event any provision of this **Agreement** shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the other provisions of this **Agreement** shall remain in full force and effect.

IN WITNESS WHEREOF, the **City** and the **Contractor** have executed this **Agreement** as of the date first written above.

**[CONTRACTOR NAME]**

**THE CITY OF NEW YORK  
FINANCIAL INFORMATION SERVICES AGENCY &  
OFFICE OF PAYROLL ADMINISTRATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Roy Mogilanski  
Executive Director

Title: \_\_\_\_\_

Approved as to Form and certified as to Legal Authority

\_\_\_\_\_  
Acting Corporation Counsel (Signature)

\_\_\_\_\_  
Acting Corporation Counsel (Print)

Date: \_\_\_\_\_



**APPROVAL AS TO FORM OF A CONTRACT BY STANDARD TYPE OF CLASS**

Agency: **Financial Information Services Agency/Office of Payroll Administration**

Contract: **Information Technology and other Consultant Services - Multiple Award Contracts**

Pursuant to section 394 of the New York City Charter, I hereby approve as to form the annexed contract by standard type of class. This approval is valid for a period of twelve (12) months from the date hereof and for a maximum of two hundred (200) contracts. The above approval is made on the express understanding that the substantive language of the contract will not be altered or changed in any way without prior submission to the Office of the Corporation Counsel for approval, provided, however, that blank spaces in the contracts requiring names, dates, dollar amounts or other similar details may be completed.

APPROVED AS TO FORM AND  
CERTIFIED AS TO LEGAL AUTHORITY

\_\_\_\_\_  
ACTING CORPORATION COUNSEL

DATE: \_\_\_\_\_

SAMPLE

**ACKNOWLEDGEMENTS**

STATE OF NEW YORK    )  
  ) ss.:  
COUNTY OF NEW YORK )

On this the \_\_\_\_ day of \_\_\_\_\_, 2016, before me came Roy Mogilanski, to me known and known to me to be the Executive Director of the Financial Information Services Agency and Office of Payroll Administration of the City of New York (the person described as such in the foregoing **Agreement**), who stated that he has signed said **Agreement** on behalf of said **City** for the purposes stated herein.

\_\_\_\_\_  
NOTARY PUBLIC OR COMMISSIONER OF DEEDS

STATE OF                            )  
  ) ss.:  
COUNTY OF                        )

On this \_\_\_\_ day of \_\_\_\_\_ 2016, before me personally came \_\_\_\_\_, who proved to me his/her identity on the basis of satisfactory evidence, signed the foregoing instrument in my presence, and, being by me duly sworn, did say that s/he is \_\_\_\_\_ of \_\_\_\_\_, the corporation identified as the **Contractor** in the foregoing instrument, that s/he is duly authorized to execute said instrument on behalf of said **Contractor**, and that s/he has so executed the foregoing instrument for the purposes stated therein.

\_\_\_\_\_  
NOTARY PUBLIC OR COMMISSIONER OF DEEDS

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**APPENDIX A**

**GENERAL PROVISIONS GOVERNING CONTRACTS FOR  
CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN AND CLIENT SERVICES**

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**ARTICLE 1 - DEFINITIONS**

**Section 1.01 Definitions**

The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Agreement, be construed as follows, unless a different meaning is clear from the context:

A. “Agency Chief Contracting Officer” or “ACCO” shall mean the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.

B. “Agreement” shall mean the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. “City” shall mean The City of New York.

D. “City Chief Procurement Officer” or “CCPO” shall mean the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

E. “Commissioner” or “Agency Head” shall mean the head of the Department or his or her duly authorized representative. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.

F. “Comptroller” shall mean the Comptroller of the City of New York.

G. “Contractor” shall mean the entity entering into this Agreement with the Department.

H. “Days” shall mean calendar days unless otherwise specifically noted to mean business days.

I. “Department” or “Agency” shall mean the City agency that has entered into this Agreement.

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J. “Law” or “Laws” shall mean the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

K. “Procurement Policy Board” or “PPB” shall mean the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.

L. “PPB Rules” shall mean the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (“RCNY”), § 1-01 et seq.

M. “State” shall mean the State of New York.

**ARTICLE 2 - REPRESENTATIONS  
AND WARRANTIES**

**Section 2.01 Procurement of Agreement**

A. The Contractor represents and warrants that no person or entity (other than an officer, partner, or employee working solely for the Contractor) has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect compensation. Notwithstanding the preceding sentence, the Contractor may retain consultants to draft proposals, negotiate contracts, and perform other similar services. The Contractor further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution of this Agreement.

B. For any breach or violation of the representations and warranties set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

**Section 2.02 Conflicts of Interest**

A. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this

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Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

C. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

**Section 2.03 Fair Practices**

A. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:

1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;
2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy or directive, the prices and other material terms set forth in this Agreement which have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and
3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section.

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**Section 2.04 VENDEX**

The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, pursuant to PPB Rule § 2-08 and in accordance with the policies and procedures of the Mayor's Office of Contract Services. The Contractor understands that the Department's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and represents and warrants that the information it and its principals have provided is accurate and complete.

**Section 2.05 Political Activity**

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

**Section 2.06 Religious Activity**

There shall be no religious worship, instruction or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

**Section 2.07 Unlawful Discriminatory Practices: Admin. Code § 6-123**

As required by Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of Fifty Thousand Dollars (\$50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.

**Section 2.08 Bankruptcy and Reorganization**

In the event that the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven (7) days of filing.



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**ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING**

**Section 3.01 Assignment**

A. The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, or the right to execute it, or the right, title or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Commissioner. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance or other disposition without such written consent shall be void.

B. Before entering into any such assignment, transfer, conveyance or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's VENDEX questionnaire must be submitted within thirty (30) Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

C. Failure to obtain the prior written consent to such an assignment, transfer, conveyance, or other disposition may result in the revocation and annulment of this Agreement, at the option of the Commissioner. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Contractor's employees.

D. The provisions of this Section shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

E. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

**Section 3.02 Subcontracting**

A. The Contractor shall not enter into any subcontract for an amount greater than Five Thousand Dollars (\$5,000) for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. The Department hereby grants approval for all subcontracts for an amount that does not exceed Five

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Thousand Dollars (\$5,000). The Contractor must submit monthly reports to the Department indicating all such subcontractors. All subcontracts must be in writing.

B. Prior to entering into any subcontract for an amount greater than Five Thousand Dollars (\$5,000), the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor and the portion of the services that it is to perform and furnish. At the request of the Department, a copy of the proposed subcontract shall be submitted to the Department. The proposed subcontractor's VENDEX Questionnaire must be submitted, if required, within thirty (30) Days after the ACCO has granted preliminary approval of the proposed subcontractor. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the subcontractor after receiving all requested information. For proposed subcontracts that do not exceed Twenty-five Thousand Dollars (\$25,000), the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within forty-five (45) Days of the Department's receipt of the written request for approval or, if applicable, within forty-five (45) Days of the Department's acknowledged receipt of fully completed VENDEX Questionnaires for the subcontractor.

C. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the agreement between the City and the Contractor;
2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the City;
3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the agreement between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and
4. The subcontractor specifically agrees to be bound by Section 4.07 and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

D. The Contractor agrees that it is as fully responsible to the Department for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as it is for the acts and omissions of any person directly employed by it.

E. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

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F. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Paragraphs (A) and (B) of this section if revocation is deemed to be in the interest of the City in writing on no less than ten (10) Days notice unless a shorter period is warranted by considerations of health, safety, integrity issues or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

G. The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract.

H. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section.

**ARTICLE 4 - LABOR PROVISIONS**

**Section 4.01 Independent Contractor Status**

The Contractor and the Department agree that the Contractor is an independent contractor and not an employee of the Department or the City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

**Section 4.02 Employees**

All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform services under this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.

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**Section 4.03 Removal of Individuals Performing Work**

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five (5) Days' written notice. The Commissioner may direct the Contractor not to allow the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

**Section 4.04 Minimum Wage**

Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section shall be deemed a material breach of this Agreement.

**Section 4.05 Non-Discrimination: New York State Labor Law § 220-e**

A. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by New York State Labor Law § 220-e, that:

1. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;

3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

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4. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section.

B. The provisions of this Section shall be limited to operations performed within the territorial limits of the State of New York.

**Section 4.06 Non-Discrimination: Admin. Code § 6-108**

If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by New York City Administrative Code § 6-108, that:

A. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph A above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

C. Breach of the foregoing provisions shall be deemed a breach of a material provision of this Agreement.

D. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars (\$100) or by imprisonment for not more than thirty (30) Days, or both.

**Section 4.07 Non-Discrimination: E.O. 50 -- Equal Employment Opportunity**

A. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY § 10-01 et seq. No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:

1. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including,

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but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

2. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;

3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;

4. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;

5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, Division of Labor Services ("DLS"); and

6. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

B. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

1. Disapproval of the Contractor; and/or
2. Suspension or termination of the Agreement; and/or
3. Declaring the Contractor in default; and/or
4. In lieu of any of the foregoing sanctions, imposition of an employment program.

C. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.

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D. The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

E. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Paragraph.

F. Nothing contained in this Section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

**ARTICLE 5 - RECORDS,  
AUDITS, REPORTS, AND Investigations**

**Section 5.01 Books and Records**

The Contractor agrees to maintain separate and accurate books, records, documents and other evidence, and to utilize appropriate accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

**Section 5.02 Retention of Records**

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the records must be retained until the completion of such litigation, claim, or audit. Any books, records and other documents that are created in an electronic format in the regular course of business may be retained in an

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electronic format. Any books, records, and other documents that are created in the regular course of business as a paper copy may be retained in an electronic format provided that the records satisfy the requirements of New York Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records or other documents on the grounds that such documents do not satisfy CPLR 4539(b).

### **Section 5.03 Inspection**

A. At any time during the Agreement or during the record retention period set forth in section 5.02, the City, including the Department and the Department’s Office of the Inspector General, as well as City, State and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, and other documents maintained or retained by or on behalf of the Contractor pursuant to this Article. Notwithstanding any provision herein regarding notice of inspection, all books, records and other documents of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department’s Office of the Inspector General and/or the Comptroller without prior notice and at no additional cost to the City. The Contractor shall make such books, records and other documents available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section.

### **Section 5.04 Audit**

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the Comptroller, the Department, and the Department’s Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources or otherwise.



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B. Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

C. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Department and by the Comptroller in the exercise of his/her powers under Law.

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section.

**Section 5.05 No Removal of Records from Premises**

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such data (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during the Agreement or after the Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

**Section 5.06 Electronic Records**

As used in this Appendix A, the terms books, records, documents, and other data refer to electronic versions as well as hard copy versions.

**Section 5.07 Investigations Clause**

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B. 1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction,

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agreement, lease, permit, contract, or license entered into with the City, or State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State, or;

2. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

C. 1. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

2. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:

1. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in

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Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

**F. Definitions**

1. The term "license" or "permit" as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

2. The term "person" as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

3. The term "entity" as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.

4. The term "member" as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

G. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for

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future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

**Section 5.08 Confidentiality**

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law (“FOIL”), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

B. The Contractor shall provide notice to the Department within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City’s discretion, or if monies

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remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information, or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

**ARTICLE 6 - COPYRIGHTS,  
PATENTS, INVENTIONS, and ANTITRUST**

**Section 6.01 Copyrights**

A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

B. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement (“Copyrightable Materials”) shall be considered “work-

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made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

## **Section 6.02 Patents and Inventions**

The Contractor shall promptly and fully report to the Department any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a

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determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

**Section 6.03 Pre-existing Rights**

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

**Section 6.04 Antitrust**

The Contractor hereby assigns, sells, and transfers to the City all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods or services procured by the City under this Agreement.

**ARTICLE 7 - INSURANCE**

**Section 7.01 Agreement to Insure**

The Contractor shall not commence performing services under this Agreement unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

**Section 7.02 Commercial General Liability Insurance**

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and shall be “occurrence” based rather than “claims-made.”

B. Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

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**Section 7.03 Professional Liability Insurance**

A. At the Department's direction, if professional services are provided pursuant to this Agreement, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

B. All subcontractors of the Contractor providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

C. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

**Section 7.04 Workers' Compensation, Disability Benefits, and Employer's Liability Insurance**

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

**Section 7.05 Unemployment Insurance**

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

**Section 7.06 Business Automobile Liability Insurance**

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in



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connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA0001.

B. If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

**Section 7.07 General Requirements for Insurance Coverage and Policies**

A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Law Department.

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

C. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

D. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

E. The City's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

**Section 7.08 Proof of Insurance**

A. For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers' compensation coverage.

1. C-105.2 Certificate of Workers' Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);

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4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or

5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the City, together with its officials and employees, has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form attached to this Appendix A or copies of all policies referenced in the Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

D. The Contractor shall provide the City with a copy of any policy required under this Article upon the demand for such policy by the Commissioner or the New York City Law Department.

E. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner, to the attention of the Executive Director, Financial Information Services Agency, 450 West 33rd Street, 4th Floor, New York, NY 10001, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

**Section 7.09 Miscellaneous**

A. Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a general liability policy maintained in accordance with this Article, the Contractor shall

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provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not have coverage under such policy (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured" and contain the following information: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

B. The Contractor's failure to maintain any of the insurance required by this Article shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO form CG 20 26.

**ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY  
AND INDEMNIFICATION**

**Section 8.01 Reasonable Precautions**

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

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**Section 8.02 Protection of City Property**

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

**Section 8.03 Indemnification**

The Contractor shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

**Section 8.04 Infringement Indemnification**

The Contractor shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Agreement. The Contractor shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

**Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation**

The indemnification provisions set forth in this Article shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

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**Section 8.06 Actions By or Against Third Parties**

A. In the event any claim is made or any action brought in any way relating to Agreement, other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance which the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five (5) business Days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

**Section 8.07 Withholding of Payments**

A. In the event that any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. In the event that any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 above has accepted the City's tender of the claim or action without a reservation of rights.

D. The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.

E. The rights and remedies of the City provided for in this Section shall not be exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

**Section 8.08 No Third Party Rights**

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officers and employees.

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**ARTICLE 9 - CONTRACT CHANGES**

**Section 9.01 Contract Changes**

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. Contractors deviating from the requirements of this Agreement without a duly approved and executed change order document, or written contract modification or amendment, do so at their own risk.

**Section 9.02 Changes Through Fault of Contractor**

In the event that any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

**ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING**

**Section 10.01 Termination by the City Without Cause**

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. If the City terminates this Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

**Section 10.02 Reductions in Federal, State and/or City Funding**

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of

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services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Paragraph A, above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this section shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this agreement as appropriate.

### **Section 10.03 Contractor Default**

A. The City shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

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3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.



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C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five (5) business days notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

**Section 10.04 Force Majeure**

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

C. If the City terminates the Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance

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with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

**Section 10.05 Procedures for Termination**

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

B. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:

1. Accounting for and refunding to the Department, within forty-five (45) Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
2. Furnishing within forty-five (45) Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;
3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;
4. Submitting to the Department, within ninety (90) Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant; and
5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

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**Section 10.06 Miscellaneous Provisions**

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

**ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER**

**Section 11.01 Prompt Payment**

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. The provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

C. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

**Section 11.02 Electronic Funds Transfer**

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar

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paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of this Section for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

C. This Section is applicable to contracts valued at Twenty-Five Thousand Dollars (\$25,000) and above.

**ARTICLE 12 - CLAIMS**

**Section 12.01 Choice of Law**

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

**Section 12.02 Jurisdiction and Venue**

The parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in

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breach of this Section, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section.

**Section 12.03 Resolution of Disputes**

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within thirty (30) Days of receiving written notice of the determination

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or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section as the Contractor initiating the dispute.

3. Agency Head Determination. Within thirty (30) Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

4. Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board

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(“CDRB”) pursuant to this Section. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

E. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

1. Time, Form, and Content of Notice. Within thirty (30) Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. Agency Response. Within thirty (30) Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

3. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within fifteen (15) Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

4. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) Days from his or her receipt of all materials referred to in Paragraph (E)(3) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) Days from the Comptroller’s receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.

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F. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

1. the chief administrative law judge of the Office of Administrative Trials and Hearings (“OATH”) or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section as may be necessary in the execution of the CDRB’s functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. the City Chief Procurement Officer (“CCPO”) or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

3. a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established, and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller’s Office. The Contractor shall concurrently submit four complete sets of the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH’s offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

2. Agency Response. Within thirty (30) Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH’s offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) Days.



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3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

4. CDRB Determination. Within forty-five (45) Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

5. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be thirty (30) Days after the date the parties are formally notified of the CDRB's decision.

6. Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section.

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**Section 12.04 Claims and Actions**

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

**Section 12.05 No Claim Against Officers, Agents or Employees**

No claim shall be made by the Contractor against any officer, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

**Section 12.06 General Release**

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

**Section 12.07 No Waiver**

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

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**ARTICLE 13 - APPLICABLE LAWS**

**Section 13.01 PPB Rules**

This Agreement is subject to the PPB Rules. In the event of a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

**Section 13.02 All Legal Provisions Deemed Included**

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

**Section 13.03 Severability / Unlawful Provisions Deemed Stricken**

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

**Section 13.04 Compliance With Laws**

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

**Section 13.05 Americans with Disabilities Act (ADA)**

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. (“ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor’s compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan (“Compliance Plan”) which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the

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ACCO for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

B. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

**Section 13.06 Voter Registration**

A. Participating Agencies. Pursuant to Charter § 1057-a, if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; the Department of Small Business Services; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Health; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. Distribution of Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide

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Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

6. For the purposes of Paragraph A of this Section, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

C. Assistance in Completing Voter Registration Forms. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

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D. Required Statements. In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor's or government services are not conditioned on being registered to vote.

2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.

4. The Contractor and the Contractor's employees shall not:

a. seek to influence an applicant's political preference or party designation;

b. display any political preference or party allegiance;

c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section are material conditions of this Agreement.

F. The provisions of this Section do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

**Section 13.07 Participation in an International Boycott**

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 et seq., or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated

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company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Agreement.

C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

**Section 13.08 MacBride Principles**

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

**Section 13.09 Access to Public Health Insurance Coverage Information**

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section applies as provided in Paragraph B of this Section, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. Applicability to Certain Contractors. This Section shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. "Contractors" to whom this Section applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services,

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or request for change of address form in the daily administration of the subcontractor's contractual obligation.

C. Distribution of Public Health Insurance Pamphlet. In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene pursuant to Section 17-183 of the Admin. Code (hereinafter "pamphlet"), the Contractor hereby agrees as follows:

1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.

2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter §1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.



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**Section 13.10 Distribution of Personal Identification Materials**

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 (“E.O. 150”), if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section. The participating City agencies are: Administration for Children’s Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks and Recreation, Department of Probation, and Department of Youth and Community Development.

B. Policy. As expressed in E.O. 150, it is the policy of the City to provide information to individuals about how they can obtain the various forms of City, State, and Federal government-issued identification and, where appropriate, to assist them with the process for applying for such identification.

C. Distribution of Materials. If the Contractor has regular contact with the public in the daily administration of its business, the Contractor hereby agrees to provide and distribute materials and information related to whether and how to obtain various forms of City, State, and Federal government-issued identification as the Agency directs in accordance with the Agency’s plans developed pursuant to E.O. 150.

**ARTICLE 14 - MISCELLANEOUS PROVISIONS**

**Section 14.01 Conditions Precedent**

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

B. The requirements of this Section shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

**Section 14.02 Merger**

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

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**Section 14.03 Headings**

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

**Section 14.04 Notice**

A. The Contractor and the Department hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by fax or email and, unless receipt of the fax or e-mail is acknowledged by the recipient by fax or e-mail, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

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**AFFIRMATION**

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except

\_\_\_\_\_

Full name of Proposer or Bidder *[below]*

\_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:**

A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER \_\_\_\_\_

B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_

C - Corporation

EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_

By \_\_\_\_\_

Signature

\_\_\_\_\_

Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

\* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

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**CITY OF NEW YORK**

**CERTIFICATION BY BROKER OR AGENT**

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

\_\_\_\_\_  
[Name of broker or agent (typewritten)]

\_\_\_\_\_  
[Address of broker or agent (typewritten)]

\_\_\_\_\_  
[Email Address of broker or agent (typewritten)]

\_\_\_\_\_  
[Phone number/Fax number of broker or agent (typewritten)]

\_\_\_\_\_  
[Signature of authorized official, broker, or agent]

\_\_\_\_\_  
[Name and title of official, broker, or agent (typewritten)]

State of .....)

) ss.:

County of .....)

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF \_\_\_\_\_

**Attachment A: Contractor's Services Class(es) and Maximum Hourly Rate(s)**

<b>Services Class</b>	<b>Services Class Title</b>	<b>Maximum Hourly Rate</b>

SAMPLE

**Attachment B: The RFP**

SAMPLE

**Attachment C: Sample "No Bid" Response Form**

**City of New York  
Financial Information Services Agency/Office of Payroll Administration  
Consultant Pool "No Bid" Response to Task Order Request**

Contractor Name: \_\_\_\_\_

Task Order Request No.: \_\_\_\_\_

The above-identified Contractor (the "Contractor") submits this "No Bid" Response in response to the above-identified Task Order Request as provided in the Agreement for the Provision of Information Technology and Other Consultant Services dated \_\_\_\_\_, 2016 between FISA/OPA and the Contractor, as amended, (the "Agreement").

The Contractor declines to take part in the above-referenced Task Order Request, and accordingly submits this "No Bid" Response as required by the Agreement, for the following reason(s) (for example, a conflict of interest exists):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**[Contractor Name]**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attachment D: Sample Background Check Form**

*[Contractor Letterhead]*

**CERTIFICATION OF BACKGROUND INQUIRY OF CONSULTANTS**

**TASK ORDER REQUEST NUMBER #\_\_\_\_\_**

Prior to candidate(s) beginning work, Contractor firms are required to complete a background information check of the candidate(s).

This Certification must be executed and returned with the executed and notarized Task Order for the above Task Order Request.

The Contractor identified below (the "Contractor") attests that at a minimum, the following background information checks were performed on these candidate(s): *[candidate names]* \_\_\_\_\_

1. Criminal record (ten years)
2. Payment of taxes (six years; State and Federal)
3. Verification of education
4. Employment history
5. Service in United States Armed Forces, with type of discharge if applicable.

I hereby certify that each of the above candidates has all applicable Federal, State or local authorizations necessary to provide the services described in the Task Order.

I hereby affirm that the Contractor does not and shall not discriminate against employees or applicants for employment pursuant to Federal, State or Local Law.

Select (A) or (B):

\_\_\_\_ (A) I hereby affirm that the Contractor has completed the required background checks, that no negative information was found, and that there is no known reason that the candidate cannot perform the required work to the satisfaction of the City of New York Financial Information Services Agency and/or Office of Payroll Administration ("FISA/OPA").

OR

\_\_\_\_ (B) I hereby affirm that the Contractor has completed the required background checks. The attached negative information consisting of \_\_\_\_ pages was found, and is forwarded for your review. There is no other known information that affects the candidate's ability to perform the required work to the satisfaction of FISA/OPA.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public



### Attachment E: Sample Confidentiality Statement

#### CONSULTANT CONFIDENTIALITY/NON-DISCLOSURE

In consideration of being granted access to information, facilities, and/or systems of the City of New York Financial Information Services Agency and/or the City of New York Office of Payroll Administration (collectively, "FISA/OPA" or the "City") in connection with an agreement (the "Agreement") to perform services for FISA/OPA, the undersigned individual ("Consultant") hereby agrees as follows:

1. "City Confidential Information" includes all information or material belonging to the City or in the City's possession, wherever located, whether tangible or intangible, that is of a confidential or proprietary nature (whether or not labeled as such), including, without limitation, any discussions or negotiations with City personnel and any confidential or proprietary information and/or materials relating to the City's business or operations (including, without limitation, trade secrets, processes, financial information, employee or vendor information, software code, and/or information concerning any hardware or system). City Confidential Information also includes anything Consultant prepares or delivers to the City as part of Consultant's services, except to the extent the Agreement may state otherwise.
2. Consultant shall hold all City Confidential Information in strict confidence, using at least the same degree of care that it uses to protect its own information of like importance (but in no event less than a commercially reasonable degree of care), and shall only use (or permit the use of) City Confidential Information in the good-faith performance of its obligations under the Agreement. Consultant shall immediately notify FISA/OPA of any unauthorized use or disclosure.
3. Consultant shall not disclose any City Confidential Information to any third party without FISA/OPA's prior express written consent.
4. All City Confidential Information shall remain the property of the City, and nothing in this document grants Consultant any license or right in or to any City Confidential Information.
5. Consultant shall promptly notify the City in writing, giving full details, if Consultant becomes subject to any requirement to disclose City Confidential Information (whether due to a subpoena or otherwise). Consultant shall thereafter cooperate with the City in seeking to prevent disclosure. Consultant shall make commercially reasonable efforts to secure confidential treatment of any City Confidential Information that it is ultimately compelled to disclose. Any City Confidential Information disclosed shall nonetheless remain City Confidential Information and subject to Consultant's obligations stated herein.
6. This paragraph applies to all City Confidential Information in Consultant's possession or under its control. Within five (5) business days following any expiration, termination, or cancellation of the Agreement, Consultant shall: (i) return to the City all City Confidential Information that is capable of being returned; (ii) permanently delete or erase, or otherwise irretrievably destroy, all City Confidential Information contained in electronic or other form that by its nature is not capable of being returned; and (iii) upon the City's request, certify in writing that it has taken such actions.
7. Consultant acknowledges that any breach or anticipatory breach of Consultant's obligations hereunder will cause the City irreparable harm for which there may be no adequate remedy at law, and that the City shall therefore be entitled to injunctive or other equitable relief in addition to any other remedy available to the City.
8. The above confidentiality obligations shall survive any cancellation, expiration, or termination of the Agreement, regardless of anything in the Agreement to the contrary.

Consultant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Print Firm Name: \_\_\_\_\_

**Attachment F: Whistleblower Protection Expansion Act Rider and Notice Required by  
Local Laws 30 and 33**

**WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER**

1. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,

- (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
- (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
- (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
  - (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
  - (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.
- (d) For the purposes of this rider, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.
- (e) This rider is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

2. Paragraph 1 is not applicable to this Contract if it is valued at \$100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.



## **REPORTING INFORMATION TO THE NEW YORK CITY DEPARTMENT OF INVESTIGATION**

If you have information of any corrupt or fraudulent activities or unethical conduct relating to a New York City funded project or contract, contact:

**Department of Investigation (DOI) Complaint Bureau  
212-825-5959**

or by mail or in person at:

DEPARTMENT OF INVESTIGATION  
80 MAIDEN LANE, 17th FLOOR  
NEW YORK, NEW YORK 10038  
Attention: COMPLAINT BUREAU

or file a complaint on-line at:

[www.nyc.gov/doi](http://www.nyc.gov/doi)

*All communications are confidential.*

### **THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a contractor or subcontractor that has a contract with the City or a City contractor of more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- To be protected by this law, an employee must report information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract over \$100,000 to DOI or to certain other government officials all of whom must forward the report to DOI.
- Any employee who has made such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.



**Attachment G: Paid Sick Leave Law Contract Rider**

**PAID SICK LEAVE LAW CONTRACT RIDER**

Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.<sup>1</sup> Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the PSLL in performance of this agreement may result in its termination.

Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of Contractor. Contractor is advised to review the PSLL and Rules in their entirety. On the website <http://www.nyc.gov/PaidSickLeave> there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which Contractor can get more information about how to comply with the PSLL. Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

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<sup>1</sup> Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time

### Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLC (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSLC may use sick time for any of the following:

- such employee’s mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee’s need for medical diagnosis or preventive medical care;
- such employee’s care of a family member (an employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee’s spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee’s place of business by order of a public official due to a public health emergency; or
- such employee’s need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLC. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee’s use of sick time pursuant to the PSLC must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements,

using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

### Exemptions and Exceptions

Notwithstanding the above, the PSLL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

### Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

### Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice.

### Records

An employer must retain records documenting its compliance with the PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.

### Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLL has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

### More Generous Policies and Other Legal Requirements

Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

**Attachment H: Hiring and Employment Rider**

**HIRING AND EMPLOYMENT RIDER:**

**HIRENYC AND REPORTING REQUIREMENTS**

**Introduction**

This Rider shall apply to all contracts for goods, services, and construction with a value of one million dollars (\$1,000,000.00) or more, provided, however, that certain requirements of the Rider shall only apply as indicated below. This Rider addresses the HireNYC process, including reporting obligations under the HireNYC process, and certain other reporting requirements imposed by law. In general, the HireNYC process under this Rider requires the Contractor to enroll with the HireNYC portal for the City of New York (“the City”) found within the Department of Small Business Services’s (“SBS”) website, to disclose all entry to mid-level job opportunities described in this Rider arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

**HireNYC Requirements**

**A. Enrollment**

The Contractor shall enroll with the HireNYC system, found at [www.nyc.gov/sbs](http://www.nyc.gov/sbs), within thirty (30) days after the registration of this Contract pursuant to Section 328 of the New York City Charter. The Contractor shall provide information about the business, designate a primary contact and say whether it intends to hire for any entry to mid-level job opportunities arising from this contract and located in New York City, and, if so, the approximate start date of the first hire.

**B. Job Posting Requirements**

Once enrolled in HireNYC, the Contractor agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from this contract and located in New York City, if any, which shall be defined as jobs requiring no more than an associate degree, as provided by the New York State Department of Labor (see Column F of <https://labor.ny.gov/statsI/2012-2022-NYS-Employment-Prospects.xls>). The information to be updated includes the types of entry and mid-level positions made available from the work arising from the contract and located in New York City, the number of positions, the anticipated schedule of initiating the hiring process for these positions, and the contact information for the Contractor’s representative charged with overseeing hiring. The Contractor must update the HireNYC portal with any hiring needs arising from the contract and located in New York City, and the requirements of the jobs to be filled, no less than three weeks prior to the intended first day of employment for each new position, except with the permission of SBS, not to be unreasonably withheld, and must also update the HireNYC portal as set forth below.

After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process, and will provide clear instructions as to when, where, and how interviews will take place.



HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.

After completing an interview of a candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if any. In addition, the Contractor shall provide the start date of new hires, and additional information reasonably related to such hires, within twenty (20) business days after the start date. In the event the Contractor does not have any job openings covered by this Rider in any given year, the Contractor shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the contract and each anniversary date.

These requirements do not limit the Contractor's ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Rider shall be interpreted so as to require the Contractor to employ any particular worker.

In addition, the provisions of this Rider shall not apply to positions that the Contractor intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York. The Contractor shall not be required to report such openings with HireNYC. However, the Contractor shall enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

### C. Breach and Liquidated Damages

If the Contractor fails to comply with the terms of the contract and this Rider (1) by not enrolling its business with HireNYC; (2) by not informing HireNYC, as required, of open positions; or (3) by failing to interview a qualified candidate, the contracting agency may assess liquidated damages in the amount of two-thousand five hundred dollars (\$2,500.00) per breach. For all other events of noncompliance with the terms of this Rider, the agency may assess liquidated damages in the amount of five hundred dollars (\$500) per breach.

Furthermore, in the event the Contractor breaches the requirements of this Rider during the term of the contract, the City may hold the Contractor in default of this contract.

### **Audit Compliance**

In addition to the auditing requirements set forth in other parts of the contract, the Contractor shall permit SBS and the City to inspect any and all records concerning or relating to job openings or the hiring of individuals for work arising from the contract and located in New York City. The Contractor shall permit an inspection within seven (7) business days of the request.

### **Other Reporting Requirements**

The Contractor shall report to the City, on a monthly basis, all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In

addition, the Contractor agrees to comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.

### **Construction Requirements**

Construction contractors shall comply with the HireNYC requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the work of the contract and located in New York City) as set forth above.

In addition, construction contractors shall reasonably cooperate with SBS and the City on specific outreach events, including Hire on the Spot events, for the hiring of trades workers for the work of this contract.

Further, this contract shall be subject to a project labor agreement if so required elsewhere in this contract.

### **Federal Hiring Requirements**

The Contractor shall comply with all federal hiring requirements as may be set forth elsewhere in this contract, including, as applicable:

- Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic opportunities for 30 percent of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for work involving any Construction trade.

**[END OF PAGE]**

**Attachment I: Contractor's Proposal**

SAMPLE

## Attachment B: Sample Task Order Request

[Date]

### TASK ORDER REQUEST #425 SERVICES CLASSES: A, B, D

Request for Services pursuant to the Agreement dated \_\_\_\_\_, 2016 between FISA/OPA and your company, as amended, for the Provision of Information Technology and Other Consultant Services (the "Agreement") Contract PIN 127FY1700001.

Dear Contractors:

This is a Task Order Request for Services under the above-referenced Agreement.

***You must respond to this Task Order Request by either submitting one or more resume(s) that meet the qualifications described in Exhibit A, or a "No Bid" response as provided in the Agreement.***

Please thoroughly review the information and requirements contained in Exhibit A to this document before responding with your resume submissions. You have three (3) business days to respond to this request.

Each resume submission must include an hourly rate for the individual being offered for consideration (which must not exceed the maximum hourly rate provided for in the Agreement) and any other information specifically requested in Exhibit A.

Responses must be received by FISA/OPA no later than 5:00 p.m. ET on \_\_\_\_\_, 20\_\_\_. Please include the above Task Order Request number in your response. Please submit your responses by email to \_\_\_\_\_ or by fax to \_\_\_\_\_, Attn: \_\_\_\_\_.

Following this deadline, FISA/OPA will evaluate and rank the resumes and proposed hourly rates of all candidates submitted in response to this Task Order Request who meet the minimum requirements set forth in Exhibit A. This process may include conducting interviews and/or obtaining other information as FISA/OPA deems appropriate.

If one or more candidate(s) that you submit is/are selected, you will be asked to execute and notarize a written Task Order identifying the individual(s) and their associated hourly rate(s), and setting forth the details of the specific services such as scheduling, any payment terms, and so on. The Task Order will be subject to the terms and conditions of the Agreement. FISA/OPA will have no obligations regarding any candidate(s) you submit until a duly executed Task Order is in place.

In addition, you will be required to submit a certification that you have conducted a background check for each such individual, and each individual will be required to execute a FISA/OPA non-disclosure form as a condition of performing services. (FISA/OPA will provide forms for both of these.) Delay in providing either document will result in a delay of the individual's start date.

If you have any questions, please contact \_\_\_\_\_ at \_\_\_\_\_.

[Attachment B: Sample Task Order Request (cont'd)]

## **EXHIBIT A**

The City of New York Financial Information Services Agency and Office of Payroll Administration has a vacancy for a PS Upgrade – Manual Tester for the PeopleSoft HCM Application upgrade from version 9.0 to version 9.2 and PeopleTools across various HCM modules, such as e-Recruit, HR, Benefits Administration etc. The applications support various Citywide HR/Payroll applications and interface with Timekeeping (CityTime), Payroll Management System (PMS), and Retiree Payroll Management System (PPMS). Under the direction of the Test Lead the Upgrade Analyst/Manual Tester will use his/her prior experience creating and writing test cases and scripts geared toward functional changes to create the necessary test cases to test our upgrade covering E-Hire/HR/Benefits Admin and Base Benefits as well as additional PeopleSoft functionality. Perform system, functional, stress, regression, smoke, integration testing. Track system defects with defect tracking tool and provide supporting reports and documentation. This person will work in various teams, but will need to have the ability to work independently and prioritize tasks to meet project deadlines.

### **Required Qualifications:**

- Must have completed at least one (1) PeopleSoft HCM HR Benefits application upgrades to version 9.2 as a primary upgrade analyst/tester
- Must have completed at least three (3) PeopleSoft HCM application upgrades to versions above 9.0 as a primary analyst/tester
- Minimum five (5) years' experience working with multiple versions of PeopleSoft across multiple HRMS modules as analyst/tester
- Knowledge of E-hire/HR/Ben Admin/Base Benefits/Payroll functionality and Admin processes
- Working experience and understanding of PeopleSoft HCM applications (v 9.2) and PeopleSoft Tools (ideally v 8.54).
- Knowledge of Configuration, Security, Self-Service, and Messaging as well as a good understanding of batch processing.
- Excellent SQL knowledge is required to perform data mining and conversion analysis.
- Experience creating testing Scripts geared towards functional changes due to the Upgrade
- Thorough understanding of testing methodologies
- Experience with ERP Technical Architecture, and blackbox testing
- Experience testing legacy systems and 3rd party vendor interfaces
- Excellent communications (oral and written), interpersonal, and organizational skills

### **Preferred Qualifications:**

- Knowledge of QTP/QC is a plus.
- Knowledge of Report Distribution Tools, such as VISTA Plus, LRS products etc.
- Strong analytical and problem solving skills
- Working with an enterprise wide, large scale implementations
- Experience in CA Scheduler Tool

**Attachment C: Sample Task Order**

**TASK ORDER No.** \_\_\_\_\_  
**Task Order Request #** \_\_\_\_\_

**Date:** [date]  
**Contractor:** [Contractor name]  
**Class:** [Class(es)]  
**Consultant:** [Consultant name]

**Hourly Not to Exceed Rate:** [rate]

**Anticipated**

**Time Frame:** Starting on approximately [date] and ending no later than [date].

**Scope of Work:** See Exhibit A attached hereto.

This Task Order is entered into pursuant to Section 8 of the Agreement for Information Technology and Other Consultant Services dated \_\_\_\_\_ between the City of New York Financial Information Services Agency and Office of Payroll Administration (“FISA/OPA”) and the Contractor named above (the “Agreement”), and is subject to its terms and conditions.

The Consultant’s duties and responsibilities include, but are not limited to, those detailed in the attached Exhibit A, which is hereby incorporated herein. Pursuant to Section 3.4 of the Agreement, the City shall have the unilateral option to cancel this Task Order at any point earlier than the anticipated end date.

This Task Order authorizes payment for a maximum of forty (40) hours of work per week, as directed by the City manager. Any additional work must be authorized in writing by FISA/OPA. In no event will the City be obligated to pay for any hours not both authorized by the City and actually worked.

[Contractor Name]

The City of New York  
Financial Information Services Agency &  
Office of Payroll Administration

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Roy Mogilanski  
Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

[Attachment C: Sample Task Order (cont'd)]

**TASK ORDER No.** \_\_\_\_\_  
**Task Order Request #** \_\_\_\_\_

### **EXHIBIT A**

The City of New York Financial Information Services Agency and Office of Payroll Administration has a vacancy for a PS Upgrade – Manual Tester for the PeopleSoft HCM Application upgrade from version 9.0 to version 9.2 and PeopleTools across various HCM modules, such as e-Recruit, HR, Benefits Administration etc. The applications support various Citywide HR/Payroll applications and interface with Timekeeping (CityTime), Payroll Management System (PMS), and Retiree Payroll Management System (PPMS). Under the direction of the Test Lead the Upgrade Analyst/Manual Tester will use his/her prior experience creating and writing test cases and scripts geared toward functional changes to create the necessary test cases to test our upgrade covering E-Hire/HR/Benefits Admin and Base Benefits as well as additional PeopleSoft functionality. Perform system, functional, stress, regression, smoke, integration testing. Track system defects with defect tracking tool and provide supporting reports and documentation. This person will work in various teams, but will need to have the ability to work independently and prioritize tasks to meet project deadlines.

#### **Required Qualifications:**

- Must have completed at least one (1) PeopleSoft HCM HR Benefits application upgrades to version 9.2 as a primary upgrade analyst/tester
- Must have completed at least three (3) PeopleSoft HCM application upgrades to versions above 9.0 as a primary analyst/tester
- Minimum five (5) years' experience working with multiple versions of PeopleSoft across multiple HRMS modules as analyst/tester
- Knowledge of E-hire/HR/Ben Admin/Base Benefits/Payroll functionality and Admin processes
- Working experience and understanding of PeopleSoft HCM applications (v 9.2) and PeopleSoft Tools (ideally v 8.54).
- Knowledge of Configuration, Security, Self-Service, and Messaging as well as a good understanding of batch processing.
- Excellent SQL knowledge is required to perform data mining and conversion analysis.
- Experience creating testing Scripts geared towards functional changes due to the Upgrade
- Thorough understanding of testing methodologies
- Experience with ERP Technical Architecture, and blackbox testing
- Experience testing legacy systems and 3rd party vendor interfaces
- Excellent communications (oral and written), interpersonal, and organizational skills

#### **Preferred Qualifications:**

- Knowledge of QTP/QC is a plus.
- Knowledge of Report Distribution Tools, such as VISTA Plus, LRS products etc.
- Strong analytical and problem solving skills
- Working with an enterprise wide, large scale implementations
- Experience in CA Scheduler Tool

[Attachment C: Sample Task Order (cont'd)]

**TASK ORDER No.** \_\_\_\_\_  
**Task Order Request #** \_\_\_\_\_

**Acknowledgements**

STATE OF NEW YORK        )  
  ) ss.:  
COUNTY OF NEW YORK    )

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me came Roy Mogilanski, to me known and known to me to be the Executive Director of the Financial Information Services Agency and Office of Payroll Administration of the City of New York (the person described as such in the foregoing Agreement), who stated that he has signed said Agreement on behalf of said City for the purposes stated herein.

\_\_\_\_\_  
NOTARY PUBLIC OR COMMISSIONER OF DEEDS

STATE OF                            )  
  ) ss.:  
COUNTY OF                        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally came \_\_\_\_\_, who proved to me his/her identity on the basis of satisfactory evidence, signed the foregoing instrument in my presence, and, being by me duly sworn, did say that s/he is \_\_\_\_\_ of \_\_\_\_\_, the entity identified as the Contractor in the foregoing instrument, that s/he is duly authorized to execute said instrument on behalf of said Contractor, and that s/he has so executed the foregoing instrument for the purposes stated therein.

\_\_\_\_\_  
NOTARY PUBLIC OR COMMISSIONER OF DEEDS



**Attachment D: Current FISA/OPA Consultant Background Check Form**

*[Contractor Letterhead]*

**CERTIFICATION OF BACKGROUND INQUIRY OF CONSULTANTS  
TASK ORDER REQUEST NUMBER #\_\_\_\_\_**

Prior to candidate(s) beginning work, Contractor firms are required to complete a background information check of the candidate(s).

This Certification must be executed and returned with the executed and notarized Task Order for the above Task Order Request.

The Contractor identified below (the "Contractor") attests that at a minimum, the following background information checks were performed on these candidate(s): [candidate names] \_\_\_\_\_

- Criminal record (ten years)
- Payment of taxes (six years; State and Federal)
- Verification of education
- Employment history
- Service in United States Armed Forces, with type of discharge if applicable.

I hereby certify that each of the above candidates has all applicable Federal, State or local authorizations necessary to provide the services described in the Task Order.

I hereby affirm that the Contractor does not and shall not discriminate against employees or applicants for employment pursuant to Federal, State or Local Law.

*Select (A) or (B):*

\_\_\_\_ (A) I hereby affirm that the Contractor has completed the required background checks, that no negative information was found, and that there is no known reason that the candidate cannot perform the required work to the satisfaction of the City of New York Financial Information Services Agency and/or Office of Payroll Administration ("FISA/OPA").

OR

\_\_\_\_ (B) I hereby affirm that the Contractor has completed the required background checks. The attached negative information consisting of \_\_\_\_ pages was found, and is forwarded for your review. There is no other known information that affects the candidate's ability to perform the required work to the satisfaction of FISA/OPA.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

**Attachment E: Current FISA/OPA Consultant non-disclosure form**

**CONSULTANT CONFIDENTIALITY/NON-DISCLOSURE**

In consideration of being granted access to information, facilities, and/or systems of the City of New York Financial Information Services Agency and/or the City of New York Office of Payroll Administration (collectively, “**FISA/OPA**” or the “**City**”) in connection with an agreement (the “**Agreement**”) to perform services for **FISA/OPA**, the undersigned individual (“**Consultant**”) hereby agrees as follows:

1. “**City Confidential Information**” includes all information or material belonging to the **City** or in the **City’s** possession, wherever located, whether tangible or intangible, that is of a confidential or proprietary nature (whether or not labeled as such), including, without limitation, any discussions or negotiations with **City** personnel and any confidential or proprietary information and/or materials relating to the **City’s** business or operations (including, without limitation, trade secrets, processes, financial information, employee or vendor information, software code, and/or information concerning any hardware or system). **City Confidential Information** also includes anything **Consultant** prepares or delivers to the **City** as part of **Consultant’s** services, except to the extent the **Agreement** may state otherwise.
2. **Consultant** shall hold all **City Confidential Information** in strict confidence, using at least the same degree of care that it uses to protect its own information of like importance (but in no event less than a commercially reasonable degree of care), and shall only use (or permit the use of) **City Confidential Information** in the good-faith performance of its obligations under the **Agreement**. **Consultant** shall immediately notify **FISA/OPA** of any unauthorized use or disclosure.
3. **Consultant** shall not disclose any **City Confidential Information** to any third party without **FISA/OPA’s** prior express written consent.
4. All **City Confidential Information** shall remain the property of the **City**, and nothing in this document grants **Consultant** any license or right in or to any **City Confidential Information**.
5. **Consultant** shall promptly notify the **City** in writing, giving full details, if **Consultant** becomes subject to any requirement to disclose **City Confidential Information** (whether due to a subpoena or otherwise). **Consultant** shall thereafter cooperate with the **City** in seeking to prevent disclosure. **Consultant** shall make commercially reasonable efforts to secure confidential treatment of any **City Confidential Information** that it is ultimately compelled to disclose. Any **City Confidential Information** disclosed shall nonetheless remain **City Confidential Information** and subject to **Consultant’s** obligations stated herein.
6. This paragraph applies to all **City Confidential Information** in **Consultant’s** possession or under its control. Within five (5) business days following any expiration, termination, or cancellation of the **Agreement**, **Consultant** shall: (i) return to the **City** all **City Confidential Information** that is capable of being returned; (ii) permanently delete or erase, or otherwise irretrievably destroy, all **City Confidential Information** contained in electronic or other form that by its nature is not capable of being returned; and (iii) upon the **City’s** request, certify in writing that it has taken such actions.
7. **Consultant** acknowledges that any breach or anticipatory breach of **Consultant’s** obligations hereunder will cause the **City** irreparable harm for which there may be no adequate remedy at law, and that the **City** shall therefore be entitled to injunctive or other equitable relief in addition to any other remedy available to the **City**.
8. The above confidentiality obligations shall survive any cancellation, expiration, or termination of the **Agreement**, regardless of anything in the **Agreement** to the contrary.

**Consultant Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_ **Print Firm Name:** \_\_\_\_\_

**Attachment F: Notice to All Prospective Contractors: Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement**

**NOTICE TO ALL PROSPECTIVE CONTRACTORS**

**PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT**

**ARTICLE I. M/WBE PROGRAM**

Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter “Section 6-129”). Section 6-129 establishes the program for participation in City procurement (“M/WBE Program”) by minority- owned business enterprises (“MBEs”) and women-owned business enterprises (“WBEs”), certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6- 129, the intent of the program is to address the impact of discrimination on the City’s procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are pursuant to Section 6-129, and the rules of the Department of Small Business Services (“DSBS”) promulgated thereunder.

**If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the “M/WBE Utilization Plan”), and are detailed below.**

**The Contractor must comply with all applicable MBE and WBE requirements for this Contract.**

All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein shall have the meanings given such terms in Section 6-129.

Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard and professional services contracts.

Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE Program.

**PART A**

**PARTICIPATION GOALS FOR CONSTRUCTION, STANDARD AND PROFESSIONAL SERVICES CONTRACTS OR TASK ORDERS**

1. The **MBE and/or WBE Participation Goals** established for this Contract or Task Orders issued pursuant to this Contract, (“**Participation Goals**”), as applicable, are set forth

on Schedule B, Part I to this Contract (see Page 1, line 1 Total Participation Goals) or will be set forth on Schedule B, Part I to Task Orders issued pursuant to this Contract, as applicable.

The **Participation Goals** represent a percentage of the total dollar value of the Contract or Task Order, as applicable, that may be achieved by awarding subcontracts to firms certified with New York City Department of Small Business Services as MBEs and/or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in Section 3 below, unless the goals have been waived or modified by Agency in accordance with Section 6- 129 and Part A, Sections 10 and 11 below, respectively.

2. If **Participation Goals** have been established for this Contract or Task Orders issued pursuant to this Contract, Contractor agrees or shall agree as a material term of the Contract that Contractor shall be subject to the **Participation Goals**, unless the goals are waived or modified by Agency in accordance with Section 6-129 and Part A, Sections 10 and 11 below, respectively.

3. If **Participation Goals** have been established for this Contract or Task Order issued pursuant to this Contract, a Contractor that is an MBE and/or WBE shall be permitted to count its own participation toward fulfillment of the relevant **Participation Goal**, provided that in accordance with Section 6-129 the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that the Contractor pays to direct subcontractors (as defined in Section 6-129(c)(13)), and provided further that a Contractor that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both.

A Contractor that is a qualified joint venture (as defined in Section 6-129(c)(30)) shall be permitted to count a percentage of its own participation toward fulfillment of the relevant **Participation Goal**. In accordance with Section 6-129, the value of Contractor's participation shall be determined by subtracting from the total value of the Contract or Task Order, as applicable, any amounts that Contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount shall be counted either toward the goal for MBEs or the goal for WBEs, but not both.

4. A. If **Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Utilization Plan, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. In the event that this M/WBE Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted

the bidder or proposer, as applicable, a pre- award waiver of the **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

B. (i) If this Contract is for a master services agreement or other requirements type contract that will result in the issuance of Task Orders that will be individually registered (“Master Services Agreement”) and is subject to M/WBE **Participation Goals**, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, M/WBE Participation Requirements for Master Services Agreements That Will Require Individually Registered Task Orders, Part II (page 2) indicating the prospective contractor’s certification and required affirmations to make all reasonable good faith efforts to meet participation goals established on each individual Task Order issued pursuant to this Contract, or if a partial waiver is obtained or such goals are modified by the Agency, to meet the modified **Participation Goals** by soliciting and obtaining the participation of certified MBE and/or WBE firms. In the event that the Schedule B indicates that the bidder or proposer, as applicable, does not intend to meet the **Participation Goals** that may be established on Task Orders issued pursuant to this Contract, the bid or proposal, as applicable, shall be deemed non- responsive.

(ii) **Participation Goals** on a Master Services Agreement will be established for individual Task Orders issued after the Master Services Agreement is awarded. If **Participation Goals** have been established on a Task Order, a contractor shall be required to submit a Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders That Are Issued Pursuant to Master Services Agreements, Part II (see Pages 2-4) indicating: (a) whether the contractor is an MBE or WBE, or qualified joint venture; (b) the percentage of work it intends to award to direct subcontractors; and (c) in cases where the contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end. The contractor must engage in good faith efforts to meet the **Participation Goals** as established for the Task Order unless Agency has granted the contractor a pre-award waiver of the **Participation Goals** in accordance with Section 6-129 and Part A, Section 10 below.

**C. THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART II). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS (SEE SECTION V OF PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/PROPOSER WILL BE NOTIFIED BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER**

**THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.**

5. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multi- year contracts, such list shall also be submitted every year thereafter. The Agency may also require the Contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor must identify all those to which it intends to award construction subcontracts for any portion of the Wicks trade work at the time of bid submission, regardless of what point in the life of the contract such subcontracts will occur. In identifying intended subcontractors in the bid submission, bidders may satisfy any Participation Goals established for this Contract by proposing one or more subcontractors that are MBEs and/or WBEs for any portion of the Wicks trade work.** In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. MBE and WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the **Participation Goals**. Such certification must occur prior to the firms' commencement of work. A list of MBE and WBE firms may be obtained from the DSBS website at [www.nyc.gov/buycertified](http://www.nyc.gov/buycertified), by emailing DSBS at [buyer@sbs.nyc.gov](mailto:buyer@sbs.nyc.gov), by calling (212) 513-6356, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7<sup>th</sup> floor. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting [www.nyc.gov/getcertified](http://www.nyc.gov/getcertified), emailing [MWBE@sbs.nyc.gov](mailto:MWBE@sbs.nyc.gov), or calling the DSBS certification helpline at (212) 513-6311. A firm that is certified as both an MBE and a WBE may be counted either toward the goal for MBEs or the goal for WBEs, but not both. No credit shall be given for participation by a graduate MBE or graduate WBE, as defined in Section 6-129(c)(20).

7. Where an **M/WBE** Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to,: the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors; the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where applicable, hired by any of the Contractor's direct subcontractors; and the dates and amounts paid to each MBE or WBE. The Contractor shall also submit, along with its voucher for final payment: the total amount it paid to subcontractors, and, where applicable pursuant to Section 6- 129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and a final list, certified under penalty of perjury,

which shall include the name, address and contact information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's **M/WBE Utilization Plan**, Agency shall take appropriate action, in accordance with Section 6-129 and Article II below, unless the Contractor has obtained a modification of its **M/WBE Utilization Plan** in accordance with Section 6-129 and Part A, Section 11 below.

9. Where an **M/WBE Utilization Plan** has been submitted, and the Contractor requests a change order the value of which exceeds the greater of 10 percent of the Contract or Task Order, as applicable, or \$500,000, Agency shall review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the **Participation Goals** should be modified.

10. Pre-award waiver of **the Participation Goals**. (a) A bidder or proposer, or contractor with respect to a Task Order, may seek a pre-award full or partial waiver of the Participation Goals in accordance with Section 6-129, which requests that Agency change one or more **Participation Goals** on the grounds that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its **M/WBE Utilization Plan**.

(b) To apply for a full or partial waiver of the **Participation Goals**, a bidder, proposer, or contractor, as applicable, must complete Part III (Page 5) of Schedule B and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency by email at \_\_\_\_\_ or via facsimile at ( \_\_\_\_\_). Bidders, proposers, or contractors, as applicable, who have submitted requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

(c) If the Agency determines that the **Participation Goals** are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals, or revise the Task Order, as applicable.

(d) Agency may grant a full or partial waiver of the **Participation Goals** to a bidder, proposer or contractor, as applicable, who demonstrates—before submission of the bid, proposal or Task Order, as applicable—that it has legitimate business reasons for proposing the level of subcontracting in its **M/WBE Utilization Plan**. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder, proposer or contractor, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts represented by the **Participation Goals**. In making such determination, Agency may consider whether the **M/WBE Utilization Plan** is consistent with past subcontracting practices of the bidder, proposer or contractor, as

applicable, whether the bidder, proposer or contractor, as applicable, has made efforts to form a joint venture with a certified firm, and whether the bidder, proposer, or contractor, as applicable, has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

11. Modification of M/WBE Utilization Plan. (a) A Contractor may request a modification of its M/WBE Utilization Plan after award of this Contract. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its M/WBE Utilization Plan as part of its bid submission.** The Agency may grant a request for Modification of a Contractor's M/WBE Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the Participation Goals. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(i) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;

(ii) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;

(iii) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs or WBEs that their interest in the Contract was solicited;

(iv) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the M/WBE Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;

(v) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

(vi) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;

(vii) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;



(viii) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

Agency's M/WBE officer shall provide written notice to the Contractor of the determination.

(b) The Agency may modify the **Participation Goals** when the scope of the work has been changed by the Agency in a manner that affects the scale and types of work that the Contractor indicated in its **M/WBE Utilization Plan** would be awarded to subcontractors.

12. If this Contract is for an indefinite quantity of construction, standard or professional services or is a requirements type contract and the Contractor has submitted an **M/WBE Utilization Plan** and has committed to subcontract work to MBEs and/or WBEs in order to meet the **Participation Goals**, the Contractor will not be deemed in violation of the M/WBE Program requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that the Agency has determined that such work is not needed.

13. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, at least once annually during the term of the Contract or Task Order, as applicable, Agency shall review the Contractor's progress toward attainment of its **M/WBE Utilization Plan**, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

14. If **Participation Goals** have been established for this Contract or a Task Order issued pursuant to this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

## **PART B**

### **MISCELLANEOUS**

1. The Contractor shall take notice that, if this solicitation requires the establishment of a **M/WBE Utilization Plan**, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See §6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the **M/WBE Utilization Plan**.

2. Pursuant to DSBS rules, construction contracts that include a requirement for a **M/WBE Utilization Plan** shall not be subject to the law governing Locally Based Enterprises set forth in Section 6-108.1 of the Administrative Code of the City of New York.

3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and/or WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and/or WBEs in contracts.

4. Prospective contractors are encouraged to enter into qualified joint venture agreements with MBEs and/or WBEs as defined by Section 6-129(c)(30).

5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the pertinent provisions of Section 6-129, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract and pertinent provisions of Section 6-129, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required **Participation Goals**.

## **ARTICLE II. ENFORCEMENT**

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.

2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any **M/WBE** Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering the Contractor an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.

3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to, any **M/WBE** Utilization Plan, Agency may determine that one of the following actions should be taken:

- (a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;
- (b) revoking the Contractor's pre-qualification to bid or make proposals for future contracts;
- (c) making a finding that the Contractor is in default of the Contract;
- (d) terminating the Contract;
- (e) declaring the Contractor to be in breach of Contract;
- (f) withholding payment or reimbursement;
- (g) determining not to renew the Contract;
- (h) assessing actual and consequential damages;

(i) assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;

(j) exercising rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or

(k) taking any other appropriate remedy.

4. If an **M/WBE** Utilization Plan has been submitted, and pursuant to this Article II, Section 3, the Contractor has been found to have failed to fulfill its **Participation Goals** contained in its **M/WBE** Utilization Plan or the **Participation Goals** as modified by Agency pursuant to Article I, Part A, Section 11, Agency may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of work required to be awarded to MBE and/or WBE firms to meet the **Participation Goals** and the dollar amount the Contractor actually awarded and paid, and/or credited, to MBE and/or WBE firms. In view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of Contractor's failure to meet the **Participation Goals**, the foregoing amount is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such failure, and not as a penalty. Agency may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference.

5. Whenever Agency has reason to believe that an MBE and/or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129(c)(8)), or has violated any provision of Section 6- 129, Agency shall notify the Commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

6. Statements made in any instrument submitted to Agency pursuant to Section 6-129 shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE and/or WBE in any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

7. The Contractor's record in implementing its **M/WBE** Utilization Plan shall be a factor in the evaluation of its performance. Whenever Agency determines that a Contractor's compliance with an **M/WBE** Utilization Plan has been unsatisfactory, Agency shall, after consultation with the City Chief Procurement Officer, file an advice of caution form for inclusion in VENDEX as caution data.

**Attachment G: Schedule B – M/WBE Participation Requirements for  
 Master Service Agreements That Will Require Individually Registered Task Orders**

**SCHEDULE B – M/WBE Participation Requirements for Master Service Agreements That Will  
 Require Individually Registered Task Orders**

**Part I: M/WBE Participation Goals**

**Part I to be completed by contracting agency**

**Contract Overview**

<b>APT E- Pin #</b>	<b>FMS Project ID#:</b>
<b>Project Title/ Agency PIN #</b>	Information Technology and Other Consultant Services, PIN # 127FY1700001
<b>Bid/Proposal Response Date</b>	
<b>Contracting Agency</b>	Financial Information Services Agency/Office of Payroll Administration
<b>Agency Address</b>	450 West 33rd Street <b>City</b> New York <b>State</b> NY <b>Zip Code</b> 10001
<b>Contact Person</b>	<b>Title</b>
<b>Telephone #</b>	<b>Email</b>

**Project Description** *(attach additional pages if necessary)*

FISA/OPA is seeking to establish a pool of firms that will compete to supply qualified and experienced information technology consultants on an as-needed basis in one or more specified areas of expertise to address FISA/OPA's specialized needs.

**M/WBE Participation Requirements for Construction, Professional and Standard Services Master Services Agreements That Will Require Individually Registered Task Orders**

The Master Services Agreement awarded pursuant to this solicitation is subject to Minority and Women-Owned Business Enterprises (M/WBE) participation requirements established in Section 6-129 of the New York City Administrative Code. Depending on the scope of work and the availability of M/WBEs to perform such work, agencies may set M/WBE participation goals on each individual task order issued pursuant to such agreement. If M/WBE participation goals are established for an individual task order, Prime Contractors will be required to submit a completed Schedule B – M/WBE Utilization Plan unless a full waiver is obtained. If Prime contractors submit a Schedule B, they will be required to fulfill the M/WBE participation goals on each individual task order, except to the extent that a full or partial waiver is obtained or such goals are modified by the agency. Please refer to the Notice for Prospective Contractors for more information.

Prime  
 Contract  
 Industry \_\_\_\_\_

**SCHEDULE B - Part II: Subcontractor Participation Plan**  
**Section I: Prime Contractor Contact Information**

<b>Tax ID #</b> _____	<b>FMS Vendor ID #</b> _____
<b>Business Name</b> _____	<b>Contact Person</b> _____
<b>Address</b> _____	
<b>Telephone #</b> _____	<b>Email</b> _____

**Section II: General Contract Information**

<p>✓ <b>Scopes of Subcontract Work</b></p>	<p><i>Enter brief description of all the type(s) of subcontracts for all/any services you plan on subcontracting if awarded this contract. Use additional sheets if necessary.</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p>4. _____</p> <p>5. _____</p> <p>6. _____</p> <p>7. _____</p> <p>8. _____</p> <p>9. _____</p> <p>10. _____</p> <p>11. _____</p> <p>12. _____</p> <p>13. _____</p> <p>14. _____</p> <p>15. _____</p> <p>16. _____</p> <p>17. _____</p>
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**Section V: Vendor Certification and Required Affirmations**

*I hereby:*

- 1) acknowledge my understanding of the M/WBE participation requirements as set forth herein and the pertinent provisions of Section 6-129 of the Administrative Code of the City of New York ("Section 6-129"), and the rules promulgated thereunder;*
- 2) affirm that the information supplied in support of this Subcontractor Participation Plan is true and correct;*
- 3) agree, if awarded this Contract, to comply with the M/WBE participation requirements of this Contract as established on each individual Task Order, the pertinent provisions of Section 6-129, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract;*
- 4) agree and affirm that it is a material term of this Contract that the Vendor will award to certified MBEs and/or WBEs the total dollar value of the M/WBE Participation Goals that are established on each individual Task Order issued pursuant to this Contract, unless a full waiver is obtained or such goals are modified by the Agency; and*
- 5) agree and affirm, if awarded this Contract, to make all reasonable, good faith efforts to meet the M/WBE Participation Goals established on each individual Task Order issued pursuant to this Contract, or If a partial waiver is obtained or such goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms.*

<b>Signature</b> _____	<b>Date</b> _____
<b>Print Name</b> _____	<b>Title</b> _____

**Attachment H: Schedule B – M/WBE Utilization Plan For Independently Registered Task Orders  
 That are Issued Pursuant to Master Service Agreements (MSA)**

**SCHEDULE B – M/WBE Utilization Plan For Independently Registered Task Orders That are Issued Pursuant to Master Service Agreements (MSA)**

**Part I: M/WBE Participation Goals**

**Part I to be completed by agency issuing the Task Order**

**Contract Overview**

<b>MSA Contract Agency</b> _____	<b>MSA Contract Number</b> _____
<b>Agency Issuing Task Order</b> _____	<b>Task Order Number</b> _____
<b>MSA Contract Description</b> _____	
<b>Task Order Response Date</b> _____	
<b>Agency Address</b> _____	<b>City</b> _____ <b>State</b> <u>NY</u> <b>Zip Code</b> _____
<b>Contact Person</b> _____	<b>Title</b> _____
<b>Telephone #</b> _____	<b>Email</b> _____

**Task Order Description** *(attach additional pages if necessary)*

**M/WBE Participation Goals for Services**

*Enter the percentage amount for each group or for an unspecified goal. Please note that there are no goals for Asian Americans in Professional Services.*

**Prime Contract Industry:**

Group	Percentage
<b>Unspecified</b>	<b>%</b>
or	
Black American	%
Hispanic American	%
Asian American	%
Women	%
<b>Total Participation Goals</b>	<b>%</b>

**Line 1**

**Part II to be completed by the bidder/proposer/vendor.**

**Please note: For Non-M/WBE Prime Contractors who will NOT subcontract any services and will self-perform the entire task order, you must obtain a FULL waiver by completing the Waiver Application on pages 5 and 6 and timely submitting it to the task order issuing agency pursuant to the Notice to Prospective Contractors. Once a FULL WAIVER is granted, it must be included with your task order response, bid or proposal, whichever applicable, and you do not have to complete or submit this form with your submission.**

**Section I: Prime Contractor Contact Information**

Tax ID # \_\_\_\_\_ FMS Vendor ID # \_\_\_\_\_  
 Business Name \_\_\_\_\_ Contact Person \_\_\_\_\_  
 Address \_\_\_\_\_  
 Telephone # \_\_\_\_\_ Email \_\_\_\_\_

**Section II: M/WBE Utilization Goal Calculation: Check the applicable box and complete subsection.**

**PRIME CONTRACTOR ADOPTING AGENCY M/WBE PARTICIPATION GOALS**

<input type="checkbox"/> <b>For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Agency M/WBE Participation Goals.</b>  Calculate the total dollar value of your total task order or task order bid or proposal if applicable, that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture.  Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.	<b>Total Bid/Proposal/Task Order Value</b>	<b>Agency Total Participation Goals (Line 1, Page 1)</b>		<b>Calculated M/WBE Participation Amount</b>	
	\$	X	=	\$	Line 2

**PRIME CONTRACTOR OBTAINED PARTIAL WAIVER APPROVAL: ADOPTING MODIFIED M/WBE PARTICIPATION GOALS**

<input type="checkbox"/> <b>For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) that have obtained a partial waiver of the M/WBE Participation Goals because you will be subcontracting at a lesser percentage than the Agency Total Participation Goals. (The approved partial waiver must be submitted with this form.)</b>  Calculate the total dollar value of your total task order or task order bid or proposal if applicable, that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture.  Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.	<b>Total Bid/Proposal/Task Order Value</b>	<b>Adjusted Participation Goal (From Partial Waiver)</b>		<b>Calculated M/WBE Participation Amount</b>	
	\$	X	=	\$	Line 3

**Section III: M/WBE Utilization Plan: How Proposer/Bidder/Vendor Will Fulfill Task Order M/WBE Participation Goals. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation. Check applicable box. The Proposer/Bidder/Vendor will fulfill the M/WBE Participation**

**Goals:**

As an M/WBE Prime Contractor that will self-perform and/or subcontract to other M/WBE firms a portion of the task order the value of which is at least the amount located on Lines 2 or 3 above, as applicable. The value of any work subcontracted to non-M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals.  
 Please check all that apply to Prime Contractor:  
 MBE       WBE

As a Qualified Joint Venture with an M/WBE partner, in which the value of the M/WBE partner's participation and/or the value of any work subcontracted to other M/WBE firms is at least the amount located on Lines 2 or 3 above, as applicable. The value of any work subcontracted to non M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals.

As a non M/WBE Prime Contractor that will enter into subcontracts with M/WBE firms the value of which is at least the amount located on Lines 2 or 3 above, as applicable.

**Section IV: General Contract Information**

What is the expected percentage of the total task order dollar value that you expect to award in subcontracts for services, regardless of M/WBE status? % \_\_\_\_\_

	<p><i>Enter brief description of the type(s) and dollar value of subcontracts for all/any services that you plan on subcontracting if awarded this task order. For each item, indicate whether the work is designated for participation by MBEs and/or WBEs and the time frame in which such work is scheduled to begin and end. Use additional sheets if necessary.</i></p>
<p>✓ <b>Scopes of Subcontract Work</b></p>	<p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p>4. _____</p> <p>5. _____</p> <p>6. _____</p> <p>7. _____</p> <p>8. _____</p> <p>9. _____</p> <p>10. _____</p> <p>11. _____</p> <p>12. _____</p> <p>13. _____</p> <p>14. _____</p> <p>15. _____</p> <p>16. _____</p> <p>17. _____</p>

**Section V: Vendor Certification and Required Affirmations**

*I hereby:*

- 1) acknowledge my understanding of the M/WBE participation requirements as set forth herein and the pertinent provisions of Section 6-129 of the Administrative Code of the City of New York ("Section 6-129"), and the rules promulgated thereunder;
- 2) affirm that the information supplied in support of this M/WBE Utilization Plan is true and correct;
- 3) agree, either as the only Vendor awarded the Master Service Agreement or if awarded this Task Order pursuant to a mini-competition as set forth in the Master Service Agreement, to comply with the M/WBE participation requirements of this Task Order, the pertinent provisions of Section 6-129, and the rules



*promulgated thereunder, all of which shall be deemed to be material terms of this Contract;*  
*4) agree and affirm that it is a material term of this Task Order that the Vendor will award the total dollar value of the M/WBE Participation Goals to certified MBEs and/or WBEs, unless a full waiver is obtained or such goals are modified by the Agency; and*  
*5) agree and affirm, as the only Vendor awarded the Master Service Agreement or if awarded this Task Order pursuant to a mini-competition as set forth in the Master Service Agreement, to make all reasonable, good faith efforts to meet the M/WBE Participation Goals, or If a partial waiver is obtained or such goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms.*

<b>Signature</b> _____	<b>Date</b> _____
<b>Print Name</b> _____	<b>Title</b> _____

**SCHEDULE B – PART III – REQUEST FOR WAIVER OF M/WBE PARTICIPATION REQUIREMENT**

**Contract Overview**

Tax ID # \_\_\_\_\_ FMS Vendor ID # \_\_\_\_\_  
 Business Name \_\_\_\_\_  
 Contact Name \_\_\_\_\_ Telephone # \_\_\_\_\_ Email \_\_\_\_\_  
 Type of Task Order  Mini Competition, or  Selected Vendor Response Due Date \_\_\_\_\_  
 Master Service Agreement Contract Agency: \_\_\_\_\_ Master Service Agreement Contract Number: \_\_\_\_\_  
 Task Order Number: \_\_\_\_\_ Agency Issuing Task Order: \_\_\_\_\_

**M/WBE Participation Goals as established in the Task Order Schedule B**

\_\_\_\_\_ % Agency M/WBE Participation Goal  
 \_\_\_\_\_ % Proposed M/WBE Participation Goal as anticipated by vendor seeking waiver of the total bid/proposal/task order value anticipated in good faith by the bidder/proposer/vendor to be subcontracted for services and/or credited to an M/WBE Prime Contractor or Qualified Joint Venture

**Basis for Waiver Request: Check appropriate box & explain in detail below (attach additional pages if needed)**

- Vendor does not subcontract services, and has the capacity and good faith intention to perform all such work itself with its own employees.
- Vendor subcontracts some of this type of work but at a lower % than the Task Order describes, and has the capacity and good faith intention to do so on this Task Order. (Attach subcontracting plan outlining services that the vendor will self-perform and subcontract to other vendors or consultants.)
- Vendor has other legitimate business reasons for proposing the M/WBE Participation Goal above. Explain under separate cover.

**References**

List 3 most recent contacts/subcontracts performed for NYC agencies (if any). Add more pages if necessary.

CONTRACT NO. _____	AGENCY _____	DATE COMPLETED _____
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____
CONTRACT NO. _____	AGENCY _____	DATE COMPLETED _____
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____
CONTRACT NO. _____	AGENCY _____	DATE COMPLETED _____
Contract Amount \$ _____	Amount Subcontracted \$ _____	
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____

**List 3 most recent contracts/subcontracts performed for other entities**  
 (complete ONLY if vendor has performed fewer than 3 NYC contracts)

**TYPE OF Contract** \_\_\_\_\_ **ENTITY** \_\_\_\_\_ **DATE COMPLETED** \_\_\_\_\_  
**Manager at entity that hired vendor (Name/Phone No./Email)** \_\_\_\_\_  
 Total Contract Amount **\$** \_\_\_\_\_ **Total Amount Subcontracted** **\$** \_\_\_\_\_  
 Item of Work Subcontracted and Value of subcontract \_\_\_\_\_  
 Item of Work Subcontracted and Value of subcontract \_\_\_\_\_

**TYPE OF Contract** \_\_\_\_\_ **AGENCY/ENTITY** \_\_\_\_\_ **DATE COMPLETED** \_\_\_\_\_  
**Manager at entity that hired vendor (Name/Phone No./Email)** \_\_\_\_\_  
 Total Contract Amount **\$** \_\_\_\_\_ **Total Amount Subcontracted** **\$** \_\_\_\_\_  
 Item of Work Subcontracted and Value of subcontract \_\_\_\_\_  
 Item of Work Subcontracted and Value of subcontract \_\_\_\_\_

**TYPE OF Contract** \_\_\_\_\_ **AGENCY/ENTITY** \_\_\_\_\_ **DATE COMPLETED** \_\_\_\_\_  
**Manager at entity that hired vendor (Name/Phone No./Email)** \_\_\_\_\_  
 Total Contract Amount **\$** \_\_\_\_\_ **Total Amount Subcontracted** **\$** \_\_\_\_\_  
 Item of Work Subcontracted and Value of subcontract \_\_\_\_\_  
 Item of Work Subcontracted and Value of subcontract \_\_\_\_\_

**VENDOR CERTIFICATION:** *I hereby affirm that the information supplied in support of this waiver request is true and correct, and that this request is made in good faith.*

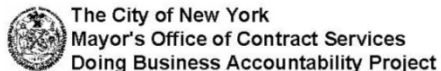
**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Print Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

*Shaded area below is for agency completion only*

**AGENCY CHIEF CONTRACTING OFFICER APPROVAL**  
**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**CITY CHIEF PROCUREMENT OFFICER APPROVAL**  
**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Waiver Determination**  
 Full Waiver Approved:   
 Waiver Denied:   
 Partial Waiver Approved:   
 Revised Participation Goal: \_\_\_\_\_ %

**Attachment I: Doing Business Data Form**



**Doing Business  
Data Form**

To be completed by the City agency prior to distribution			
Agency: _____		Transaction ID: _____	
Check One:	Transaction Type (check one):		
<input type="checkbox"/> Proposal	<input type="checkbox"/> Concession	<input type="checkbox"/> Contract	<input type="checkbox"/> Economic Development Agreement
<input type="checkbox"/> Award	<input type="checkbox"/> Franchise	<input type="checkbox"/> Grant	<input type="checkbox"/> Pension Investment Contract

Any entity receiving, applying for or proposing on an award or agreement must complete a Doing Business Data Form (see Q&A sheet for more information). Please either type responses directly into this fillable form or print answers by hand in black ink, and be sure to fill out the certification box on the last page. **Submission of a complete and accurate form is required for a proposal to be considered responsive or for any entity to receive an award or enter into an agreement.**

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York; no other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's VENDEX requirements.**

Please return the completed Data Form to the City office that supplied it. Please contact the Doing Business Accountability Project at [DoingBusiness@cityhall.nyc.gov](mailto:DoingBusiness@cityhall.nyc.gov) or 212-788-8104 with any questions regarding this Data Form. Thank you for your cooperation.

**Section 1: Entity Information**

Entity Name: \_\_\_\_\_

Entity EIN/TIN: \_\_\_\_\_

<p><b>Entity Filing Status (select one):</b></p> <p><input type="checkbox"/> Entity has never completed a Doing Business Data Form. <i>Fill out the entire form.</i></p> <p><input type="checkbox"/> Change from previous Data Form dated _____. <i>Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.</i></p> <p><input type="checkbox"/> No Change from previous Data Form dated _____. <i>Skip to the bottom of the last page.</i></p>
---

Entity is a Non-Profit:  Yes  No

Entity Type:  Corporation (any type)  Joint Venture  LLC  Partnership (any type)  
 Sole Proprietor  Other (specify): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone : \_\_\_\_\_ Fax : \_\_\_\_\_

E-mail: \_\_\_\_\_

Provide your e-mail address and/or fax number in order to receive notices regarding this form by e-mail or fax.

Doing Business Data Form

EIN/TIN: \_\_\_\_\_

Page 2 of 4

**Section 2: Principal Officers**

Please fill in the required identification information for each officer listed below. If the entity has no such officer or its equivalent, please check "This position does not exist." If the entity is filing a Change Form and the person listed is replacing someone who was previously disclosed, please check "This person replaced..." and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

**Chief Executive Officer (CEO) or equivalent officer**

This position does not exist

The highest ranking officer or manager, such as the President, Executive Director, Sole Proprietor or Chairperson of the Board.

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

This person replaced former CEO: \_\_\_\_\_ on date: \_\_\_\_\_

**Chief Financial Officer (CFO) or equivalent officer**

This position does not exist

The highest ranking financial officer, such as the Treasurer, Comptroller, Financial Director or VP for Finance.

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

This person replaced former CFO: \_\_\_\_\_ on date: \_\_\_\_\_

**Chief Operating Officer (COO) or equivalent officer**

This position does not exist

The highest ranking operational officer, such as the Chief Planning Officer, Director of Operations or VP for Operations.

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

This person replaced former COO: \_\_\_\_\_ on date: \_\_\_\_\_

For information or assistance, call the Doing Business Accountability Project at 212-788-8104.

Doing Business Data Form

EIN/TIN: \_\_\_\_\_

Page 3 of 4

**Section 3: Principal Owners**

Please fill in the required identification information for all individuals who, through stock shares, partnership agreements or other means, **own or control 10% or more of the entity**. If no individual owners exist, please check the appropriate box to indicate why and skip to the next page. If the entity is owned by other companies, those companies do not need to be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals who are no longer owners at the bottom of this page. If more space is needed, attach additional pages labeled "Additional Owners."

**There are no owners listed because (select one):**

- The entity is not-for-profit     There are no individual owners     No individual owner holds 10% or more shares in the entity  
 Other (explain): \_\_\_\_\_

**Principal Owners (who own or control 10% or more of the entity):**

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

**Remove the following previously-reported Principal Owners:**

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Doing Business Data Form

EIN/TIN: \_\_\_\_\_

Page 4 of 4

**Section 4: Senior Managers**

Please fill in the required identification information for all senior managers who oversee any of the entity's relevant transactions with the City (e.g., contract managers if this form is for a contract award/proposal, grant managers if for a grant, etc.). Senior managers include anyone who, either by title or duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any transaction with the City. **At least one senior manager must be listed, or the Data Form will be considered incomplete.** If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

**Senior Managers:**

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

**Remove the following previously-reported Senior Managers:**

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

**Certification**

**I certify that the information submitted on these four pages and \_\_\_\_\_ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the entity being found non-responsible and therefore denied future City awards.**

Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Entity Name: \_\_\_\_\_

Title: \_\_\_\_\_ Work Phone #: \_\_\_\_\_

Please return this form to the City agency that supplied it to you, not to the Doing Business Accountability Project.

For information or assistance, call the Doing Business Accountability Project at 212-788-8104.



Printed on paper containing 30% post-consumer material

## **Attachment J: Whistleblower Protection Expansion Act Rider**

### **WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER**

1. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,

- (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
- (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
- (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
  - (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
  - (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.
- (d) For the purposes of this rider, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.
- (e) This rider is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

2. Paragraph 1 is not applicable to this Contract if it is valued at \$100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.





## **REPORTING INFORMATION TO THE NEW YORK CITY DEPARTMENT OF INVESTIGATION**

If you have information of any corrupt or fraudulent activities or unethical conduct relating to a New York City funded project or contract, contact:

**Department of Investigation (DOI) Complaint Bureau**  
**212-825-5959**

or by mail or in person at:

DEPARTMENT OF INVESTIGATION  
80 MAIDEN LANE, 17th FLOOR  
NEW YORK, NEW YORK 10038  
Attention: COMPLAINT BUREAU

or file a complaint on-line at:

[www.nyc.gov/doi](http://www.nyc.gov/doi)

*All communications are confidential.*

### **THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a contractor or subcontractor that has a contract with the City or a City contractor of more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- To be protected by this law, an employee must report information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract over \$100,000 to DOI or to certain other government officials all of whom must forward the report to DOI.
- Any employee who has made such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.



**Attachment K: Iran Divestment Act Compliance Rider for New York City Contractors**

**IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR  
NEW YORK CITY CONTRACTORS**

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law (“SFL”) §165-a and General Municipal Law (“GML”) §103-9. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

- (a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
- (b) The person is a financial institution that extends twenty million dollars or more in credit to another person for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder's certification.

Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:

(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or

(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

**BIDDER'S CERTIFICATION OF COMPLIANCE WITH  
IRAN DIVESTMENT**

Pursuant to General Municipal Law §103-9, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

*[Please Check One]*

**BIDDER'S CERTIFICATION**

- By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.
  
- I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: \_\_\_\_\_, New York  
\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

## **Attachment L: Subcontractor Compliance Notice**

### **NOTICE TO BIDDERS**

As of March 2013 the City has implemented a new web based subcontractor reporting system through the City's Payee Information Portal (PIP), available at [www.nyc.gov/pip](http://www.nyc.gov/pip). In order to use the new system, a PIP account will be required. Detailed instructions on creating a PIP account and using the new system are also available at that site. Additional assistance with PIP may be received by emailing the Financial Information Services Agency Help Desk at [pip@fisa.nyc.gov](mailto:pip@fisa.nyc.gov).

In order to obtain subcontractor approval under section 3.02 of Appendix A or Article 17 of the Standard Construction Contract and PPB Rule § 4-13, Contractor is required to list the subcontractor in the system. For each subcontractor listed, Contractor is required to provide the following information: maximum contract value, description of subcontractor work, start and end date of the subcontract and identification of the subcontractor's industry. Thereafter, Contractor will be required to report in the system the payments made to each subcontractor within 30 days of making the payment. If any of the required information changes throughout the term of the contract, Contractor will be required to revise the information in the system.

Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Agency declaring the Contractor in default of the Contract and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City. For construction contracts, the provisions of Article 15 of the Standard Construction Contract shall govern the issue of liquidated damages.

Contractor hereby agrees to these provisions.

## **Attachment M: Hiring and Employment Rider**

### **HIRENYC AND REPORTING REQUIREMENTS**

#### **Introduction**

This Rider shall apply to all contracts for goods, services, and construction with a value of one million dollars (\$1,000,000.00) or more, provided, however, that certain requirements of the Rider shall only apply as indicated below. This Rider addresses the HireNYC process, including reporting obligations under the HireNYC process, and certain other reporting requirements imposed by law. In general, the HireNYC process under this Rider requires the Contractor to enroll with the HireNYC portal for the City of New York (“the City”) found within the Department of Small Business Services’s (“SBS”) website, to disclose all entry to mid-level job opportunities described in this Rider arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

#### **HireNYC Requirements**

##### **A. Enrollment**

The Contractor shall enroll with the HireNYC system, found at [www.nyc.gov/sbs](http://www.nyc.gov/sbs), within thirty (30) days after the registration of this Contract pursuant to Section 328 of the New York City Charter. The Contractor shall provide information about the business, designate a primary contact and say whether it intends to hire for any entry to mid-level job opportunities arising from this contract and located in New York City, and, if so, the approximate start date of the first hire.

##### **B. Job Posting Requirements**

Once enrolled in HireNYC, the Contractor agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from this contract and located in New York City, if any, which shall be defined as jobs requiring no more than an associate degree, as provided by the New York State Department of Labor (see Column F of <https://labor.ny.gov/statsI/2012-2022-NYS-Employment-Prospects.xls>). The information to be updated includes the types of entry and mid-level positions made available from the work arising from the contract and located in New York City, the number of positions, the anticipated schedule of initiating the hiring process for these positions, and the contact information for the Contractor’s representative charged with overseeing hiring. The Contractor must update the HireNYC portal with any hiring needs arising from the contract and located in New York City, and the requirements of the jobs to be filled, no less than three weeks prior to the intended first day of employment for each new position, except with the permission of SBS, not to be unreasonably withheld, and must also update the HireNYC portal as set forth below.

After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process, and will provide clear instructions as to when, where, and how interviews will take place. HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.

After completing an interview of a candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if any. In addition, the Contractor shall provide the start date of new hires, and additional information reasonably related to such hires, within twenty (20) business days after the start date. In the event the Contractor does not have any job openings covered by this Rider in any given year, the Contractor shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the contract and each anniversary date.

These requirements do not limit the Contractor's ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Rider shall be interpreted so as to require the Contractor to employ any particular worker.

In addition, the provisions of this Rider shall not apply to positions that the Contractor intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York. The Contractor shall not be required to report such openings with HireNYC. However, the Contractor shall enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

#### C. Breach and Liquidated Damages

If the Contractor fails to comply with the terms of the contract and this Rider (1) by not enrolling its business with HireNYC; (2) by not informing HireNYC, as required, of open positions; or (3) by failing to interview a qualified candidate, the contracting agency may assess liquidated damages in the amount of two-thousand five hundred dollars (\$2,500.00) per breach. For all other events of noncompliance with the terms of this Rider, the agency may assess liquidated damages in the amount of five hundred dollars (\$500) per breach.

Furthermore, in the event the Contractor breaches the requirements of this Rider during the term of the contract, the City may hold the Contractor in default of this contract.

#### **Audit Compliance**

In addition to the auditing requirements set forth in other parts of the contract, the Contractor shall permit SBS and the City to inspect any and all records concerning or relating to job openings or the hiring of individuals for work arising from the contract and located in New York City. The Contractor shall permit an inspection within seven (7) business days of the request.

#### **Other Reporting Requirements**

The Contractor shall report to the City, on a monthly basis, all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In addition, the Contractor agrees to comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.

#### **Construction Requirements**

Construction contractors shall comply with the HireNYC requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the work of the contract and located in New York City) as set forth above.

In addition, construction contractors shall reasonably cooperate with SBS and the City on specific outreach events, including Hire on the Spot events, for the hiring of trades workers for the work of this contract.

Further, this contract shall be subject to a project labor agreement if so required elsewhere in this contract.

### **Federal Hiring Requirements**

The Contractor shall comply with all federal hiring requirements as may be set forth elsewhere in this contract, including, as applicable:

- Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic opportunities for 30 percent of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for work involving any Construction trade.

**Attachment N: Proposal Cover Letter**

**Proposer:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Tax Identification #: \_\_\_\_\_

**Proposer's Contact Person:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Email: \_\_\_\_\_

**Class(es) of Service Proposed** *(check all that apply)*

- Class A – Custom Systems Development; Customization of Off-the-Shelf Systems; Off-the-Shelf-Products (e.g., tools, etc.)**
- Class B – Infrastructure**
- Class C – Senior Management**
- Class D – Miscellaneous**
- Class E – IT Security**
- Class F – Security Planning and Assessment**

**Proposer's Authorized Representative:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Is the response printed on both sides, on recycled paper containing the minimum percentage of recovered fiber content as requested by the City in the instructions to this RFP?

- Yes       No



**Attachment O: Price Proposal Form**

Please complete this form for only one Class. Classes are described in RFP Section III.A. **Proposers that wish to propose in multiple Classes must submit a separate Price Proposal Form (original and copies) for each Class, in separate, sealed inner envelopes as described in RFP Section IV.A.5.b.**

Check One	Class	Name	Maximum Hourly Rate
	<b>A</b>	Custom Systems Development; Customization of Off-the-Shelf Systems; Off-the-Shelf-Products (e.g., tools, etc.)	
	<b>B</b>	Infrastructure	
	<b>C</b>	Senior Management	
	<b>D</b>	Miscellaneous	
	<b>E</b>	IT Security	
	<b>F</b>	Security Planning and Assessment	[see below]
<i>For Class F Only: Provide the proposer's standard hourly rates for each of the following titles. Enter "N/A" for any title not provided. Proposers that use a different title for any of the skill levels described should enter it in the space provided.</i>			
Title	Description	Equivalent Title	Standard Hourly Rate
Information Security Analyst EL (Entry Level)	Less than 2 years' experience with security policies, processes and standards, selection and deployment of technical controls, security analysis, data access, data manipulation, programming, testing and implementation, and technical documentation.		
Info. Security Analyst I	Same as Information Security Analyst EL but minimum of 4 years' experience.		
Info. Security Analyst II	Same as Information Security Analyst EL but minimum of 10 years' experience.		
Project Manager EL	Less than 2 years' experience in overseeing projects, comprised of deliverables and/or phases; typically coordinates and delegates the assignments for the consultant project staff numbering up to 5; focal point of contact for FISA/OPA regarding project status, meetings, reporting requirements, scope changes, and issues and concerns raised by FISA/OPA.		
Project Manager I	Same as Project Manager EL except minimum of 4 years' experience, and delegates assignments for up to 10 staff.		
Project Manager II	Same as Project Manager EL except minimum of 10 years' experience, and delegates assignments for up to 20 staff.		
Information Security Specialist EL	Less than 2 years' experience in a particular security-related field. Specialists typically have one or more relevant certifications, such as Certified Information Systems Security Professional (CISSP), CompTIA's Security+, ISACA's Certified Information Security Manager (CISM), Oracle Database 12c Implementation Specialist, Red Hat® Certified Security Specialist (RHCSS), etc.		
Info. Security Specialist I	Same as Specialist EL except minimum of 4 years' experience.		
Info. Security Specialist II	Same as Specialist EL except minimum of 10 years' experience.		

Proposer Name: \_\_\_\_\_ EIN/TIN: \_\_\_\_\_

Proposer Address: \_\_\_\_\_

Authorized Representative's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_ Telephone: \_\_\_\_\_

**Attachment P: Acknowledgment of Addenda**

**ACKNOWLEDGEMENT OF ADDENDA**

**RFP Title: Information Technology and Other Consultant Services**  
**PIN #: 127FY1700001**

*Complete Part I or Part II, whichever is applicable.*

**PART I: Listed below are the dates of issue for each Addendum received in connection with this RFP.**

Addendum #1, dated \_\_\_\_\_, 20\_\_\_\_\_

Addendum #2, dated \_\_\_\_\_, 20\_\_\_\_\_

Addendum #3, dated \_\_\_\_\_, 20\_\_\_\_\_

Addendum #4, dated \_\_\_\_\_, 20\_\_\_\_\_

Addendum #5, dated \_\_\_\_\_, 20\_\_\_\_\_

Addendum #6, dated \_\_\_\_\_, 20\_\_\_\_\_

Addendum #7, dated \_\_\_\_\_, 20\_\_\_\_\_

Addendum #8, dated \_\_\_\_\_, 20\_\_\_\_\_

Addendum #9, dated \_\_\_\_\_, 20\_\_\_\_\_

**PART II:**

No Addenda were received in connection with this RFP.

**Proposer Name:** \_\_\_\_\_

**By Authorized Representative:**

**Signature:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Printed Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_